

CASE NO. 08 cv 1589

ATTACHMENT NO. 2

EXHIBIT

TAB (DESCRIPTION)

1  
2 some preoccupation with putting his hand or his  
3 arms around the victim's neck, the manner of attack  
4 is consistent in each particular case, Judge. In  
5 each case, the defendant tells the victim, Phyllis  
6 Williams and Stephanie Smith that he will kill  
7 them.

8 THE COURT: Is there a similarity?

9 MR. MURPHY: In the case at bar, he did kill  
10 the victim, Judge.

11 MS. PLACEK: Excuse me, Judge, there has to be  
12 an objection.

13 THE COURT: Objection sustained.

14 MR. MURPHY: The evidence in this case shows  
15 that the defendant killed the victim.

16 Judge, in addition to that, the  
17 evidence will show that the defendant used force in  
18 each of these offenses, used force against Phyllis  
19 Williams, used force against Stephanie Smith, and  
20 again our position is that the defendant used force  
21 against Denise Johnson.

22 In addition, your Honor, the evidence  
23 on -- or similarities on each of these crimes is  
24 the nature of the sexual attack. There's a whole  
range of ways, as your Honor knows, a person can be

1 and is sexually assaulted. In these particular  
2 cases, Judge, the evidence -- the one similarity in  
3 the cases is that the victims were assault  
4 vaginally. There was no force of anal intercourse,  
5 there's no force of oral intercourse. The evidence  
6 will also show another similarity, each victim was  
7 submitted to multiple acts of vaginal intercourse,  
8 and, your Honor, Phyllis Williams will testify to  
9 that -- Phyllis Williams did testify to that.  
10 Stephanie Smith will testify to that, and the  
11 defendant in his statement admitted to having  
12 numerous acts of only vagina intercourse with the  
13 victim, Denise Johnson.

14 The evidence will also show, Judge,  
15 that each of the victims -- and whether the Court  
16 considers it a relevant factor, I don't know, but  
17 each were kidnapped, were held, taken to a place,  
18 and held against their will.

19 In this particular case, it's our  
20 position that the victim, Denise Johnson, was taken  
21 to a garage next door to where the defendant lived,  
22 and was held in that garage against her will, and  
23 that's supported by the physical evidence, the  
24 ligature around her neck, around her hand.

1  
2 The evidence also shows that Phyllis  
3 Williams was taken out of the hallway into the  
4 defendant's apartment. The evidence will also show  
5 that Stephanie Smith was taken out of the hallway  
6 and taken into the defendant's apartment. Each of  
7 these victims were kidnapped, and I know the Court  
8 will say anytime the victim is assaulted, that they  
9 are taken against their will, but the defendant has  
10 gone beyond that. He's actually kidnapped these  
11 victims.

12 The evidence will also show, Judge,  
13 the relationship between the defendant and each of  
14 the girls who were victims is similar. The  
15 defendant had a casual relationship with Phyllis  
16 Williams. She saw him around a few times in the  
17 apartment and did not know him. The evidence will  
18 show that Stephanie Smith had a casual relationship  
19 with the defendant. She may have seen him around.  
20 The evidence did show that Denise Johnson did know  
21 the defendant, had just met him that day, a casual  
22 relationship.

23 MS. PLACEK: Objection, not in evidence, Judge.

24 THE COURT: Overruled.

MR. MURPHY: The information about the victim

1 is also similar. Regarding Stephanie Smith, she  
2 was 15 years old when she was assaulted. The  
3 evidence in this case has already shown that Denise  
4 Johnson was 12 years old when she was assaulted.

5 Further, Judge, the time of the  
6 offense, the time of the day when the offense  
7 occurs. The evidence will show, in fact, does show  
8 that Denise Johnson was assaulted in the evening  
9 hours; that Phyllis Williams was assaulted in the  
10 evening hours; and the evidence will show that  
11 Stephanie Smith was assaulted in the evening hours.

12 Your Honor, it's our position that  
13 each of these factors should be considered by the  
14 Court. Some of these factors the Court may not  
15 place great weight on, but I submit that some of  
16 them are very significant and very unique and  
17 should be considered.

18 Each case, Judge, as you know, is  
19 decided on a case by case basis. When significant  
20 common features of each of these cases are  
21 considered together, a distinctive pattern becomes  
22 evident, and it's our position, Judge, that the  
23 Court would allow Phyllis Williams to complete her  
24 testimony, and we should be allowed to introduce

1 the testimony of Stephanie Smith as well.

2 May I have a moment, Judge?

3 (Whereupon there was a short  
4 pause in the proceedings)

5 MR. MURPHY: I have nothing further, Judge.

6 THE COURT: You care to respond, Miss Placek or  
7 Mr. Lufrano?

8 MR. LUFRANO: Yes, your Honor. Your Honor, in  
9 describing the status of Illinois law on this  
10 subject, while Mr. Murphy did reiterate what this  
11 Court has said time and time again, there has to be  
12 something different than the usual circumstances of  
13 the particular crime. There's nothing that he  
14 addressed that was unusual about the crime in  
15 either of the cases he wishes to offer this court.  
16 They may have some similarities between them.  
17 Those similarities were not apparent from the  
18 reports that we were given.

19 MR. MURPHY: Objection.

20 MR. LUFRANO: But neither of them have  
21 similarities to the case at bar. In the Philfums  
22 case, which counsel has tendered, it describes what  
23 similarities the Court found, time, 46 days. The  
24 number of similarities were 10 separate factors,

1 age, both women were placed in a running in that  
2 case. The place was almost identical, certainly  
3 identical in nature such as the case between these  
4 two ladies, which were an apartment. And between  
5 them, four years prior to this, counsel's argument  
6 may have had some weight, but at the case at bar,  
7 that weight has been dissipated by the amount of  
8 time, by the difference in age, activity. In the  
9 case that he uses to support his position, it was  
10 the prosperity that allowed it to be similar, not  
11 the lack thereof.

12 We would ask the Court to recognize  
13 that there's not a sufficient similarity to  
14 establish modus operati in any of the cases that  
15 counsel seeks to use, and we'd ask that our Motion  
16 in Limine earlier heard be sustained.

17 MR. MURPHY: Judge, may I make one additional  
18 argument, which I failed to make before?

19 THE COURT: You may.

20 MR. MURPHY: Judge, one additional factor that  
21 I had notes on, which I apparently skipped, it was  
22 location of the crime regarding the defendant's  
23 residence. The location was an abandoned garage  
24 next door to where the defendant lived. The

1 evidence in the two cases that we intend to  
2 introduce before your Honor with regard to Phyllis  
3 Williams, in fact, shows that the offense occurred  
4 in the defendant's apartment. Stephanie Smith will  
5 testify that the offense also occurred in the  
6 defendant's apartment showing that the offense did  
7 occur at or near the defendant's residence in each  
8 case.

9 Your Honor, what the defendant argues,  
10 Judge, they are asking you to make us -- to hold  
11 the State to a standard whereby each crime has to  
12 be identical. Obviously, Judge, in each particular  
13 crime, there's going to be some dissimilarities, we  
14 agree, but, your Honor, there are unique factors in  
15 these cases; one in particular, the defendant's  
16 fixation with the victim's neck, ligatures being  
17 wrapped around the neck, which makes each of these  
18 crimes distinctive in their own right, and, your  
19 Honor, we're not trying to prejudice the Court.  
20 Our position is these crimes, your Honor should  
21 hear the evidence with respect to these victims and  
22 should allow it.

23 THE COURT: Are you finished?

24 MR. MURPHY: I'm finished, Judge.



1  
2 THE COURT: All right. I concluded during the  
3 course of the argument in this case that I am going  
4 to allow this evidence to proceed. I do it with a  
5 great deal of reservation, and I do it fully aware  
6 of the fact that if this were a jury trial, I am  
7 likely caught in error, I am also -- whatever it  
8 was that the Supreme Court meant in Greg versus  
9 Georgia when it says the capital defendant is  
10 entitled to a higher standard of due process, that  
11 language keeps getting itself repeated in just that  
12 form also without much hallucination as to when the  
13 defendant has received that higher standard or when  
14 he or she has not. Unfortunately, that doesn't aid  
15 the trial courts at all, but when it comes to this  
16 high prejudicial evidence, and what's wrong with it  
17 is that it is so highly prejudicial, it ought to be  
18 received with the utmost care and caution, and as I  
19 understand the law in Illinois, so far what I've  
20 heard does not meet the test to allow this evidence  
21 to go before a jury, and I have no hesitancy of  
22 telling you that if there were a jury sitting over  
23 there in this box, there is almost no probability  
24 that I will allow them to hear what I just heard  
from Phyllis Williams because the only similarities

1 between this case that distinguish it from any  
2 other aggravated criminal sexual assault case is  
3 the fact of the use of a ligature. I do not  
4 consider the argument that the time is so devoid of  
5 remoteness that the jury ought to be able to  
6 consider the offense, which are four years apart  
7 from one another. If what you have said is the  
8 status of the law based upon the fact that there  
9 has been an aggravated sexual assault committed on  
10 Phyllis Williams, and the other witness that you  
11 intend to prove; that, therefore, the fact-finder  
12 should consider those two pieces of evidence as  
13 being indicative of the defendant's identity,  
14 intent, design, or scheme, then we have  
15 substantially done away entirely with the rule that  
16 prohibits the introduction of prior and subsequent  
17 crimes, and the concept that a defendant -- that a  
18 fact-finder should not hear evidence that's  
19 designed merely to inform them of the defendant's  
20 propensity to commit crime becomes almost a joke,  
21 and the rule is not forcible because no one can  
22 intelligently enforce it if all of the things that  
23 you say are -- make this evidence admissible.

24 On the other hand, you're entitled to

1  
2 that there's such a degree of similarity that the  
3 Court can use the evidence for a purpose, that's  
4 relevant, maybe.

5 On the other hand, if you have not,  
6 then I will simply disregard it hoping again that  
7 my intellectual abilities to do that are equal to  
8 the task that I'm called upon to do.

9 Call your witness.

10 MS. PLACEK: With all due respect, irrespective  
11 of the motion, is the Court allowing this to be  
12 subsequent evidence?

13 THE COURT: Prior and subsequent evidence is  
14 what we are talking about, yes.

15 MS. PLACEK: Let me ask you this: As to this  
16 young lady, is the Court contending or is the State  
17 contending, in fact, this defendant was found  
18 guilty of criminal sexual assault?

19 THE COURT: He doesn't need to have been found  
20 guilty, does not need to have been charged with the  
21 offense in order for it to be admissible evidence.  
22 That's clear. We're not talking about prior  
23 convictions. We're talking about prior bad acts,  
24 which do not have to be proven beyond a reasonable  
doubt.

1  
2 Call your witness back, Mr. Murphy.

3 MR. MURPHY Q Phyllis, did you subsequently  
4 leave the defendant's apartment? Did you leave the  
5 defendant's apartment?

6 A Yes.

7 Q And from the time that you went into his  
8 apartment and until the time you left his  
9 apartment, how many times did he have sex with you?

10 A Just that once.

11 Q You mean there were two separate times?

12 MS. PLACEK: Objection. Leading.

13 THE COURT: Objection sustained.

14 MR. MURPHY Q How many times did he put his  
15 penis into your vagina?

16 MS. PLACEK: Objection.

17 THE COURT: Overruled.

18 MR. MURPHY Q Other than putting his penis  
19 into your vagina two times, were there any other  
20 sexual acts that he forced you to have with him?

21 MR. LUFRANO: Objection.

22 THE COURT: Overruled.

23 MR. MURPHY Q And did you know the defendant  
24 before he brought you into his apartment on that  
date?

1  
2 A No, I didn't.

3 Q Did you ever see him around the apartment  
4 building?

5 MS. PLACEK: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Yes, I have.

8 MR. MURPHY Q Before that day?

9 A Yes.

10 MR. MURPHY: No further questions, Judge.

11 THE COURT: Cross.

12 MS. PLACEK: We would take exception without  
13 waiving said exception.

14 CROSS-EXAMINATION

15 BY

16 MS. PLACEK:

17 Q How old were you at the time?

18 A Twenty-five.

19 Q And you didn't report this the same day it  
20 happened, did you?

21 A Yes, I did.

22 Q Well, ma'am, when did you report it?

23 A Later that evening.

24 Q When you say later that evening, did you  
go to the police?

1 A No, I didn't.

2 Q Well, as a matter of fact when was the  
3 first time you went to the police?

4 A I went to the hospital.

5 Q When did you come to the police?

6 A And the police came to me. They came to  
7 the hospital.

8 Q Did you talk to an Assistant State's  
9 Attorney?

10 A No.

11 Q Well, didn't you, in fact, speak to an  
12 Assistant State's Attorney, and I believe it's  
13 Peigen, P-e-i-g-e-n?

14 A At the hospital, yes.

15 Q As a matter of fact, the defendant was  
16 never charged with rape or criminal sexual assault  
17 in your case, correct?

18 MR. CASSIDY: Objection, your Honor.

19 THE COURT: What's the basis of your objection?

20 MR. CASSIDY: Relevance.

21 THE COURT: The objection is sustained.

22 MS. PLACEK: It goes to credibility.

23 THE COURT: No. Objection is sustained.

24 MS. PLACEK Q You talked to the State

1 Attorney, correct?

2 A Yes, I did.

3 Q And you told her your story, correct?

4 A Yes, I did.

5 Q And that was of the same office as these  
6 gentlemen, correct?

7 A No.

8 Q It wasn't the same State's Attorney's  
9 Office?

10 A No, it wasn't.

11 Q Well, let's talk about that for a moment.  
12 Did you ever receive a subpoena involving this  
13 matter to testify in a rape or criminal sexual  
14 assault trial?

15 MR. CASSIDY: Objection, Judge.

16 THE COURT: The objection is sustained.

17 THE WITNESS: Yes, I did.

18 MS. PLACEK Q You did? From who?

19 MR. MURPHY: Objection.

20 THE COURT: The objection is sustained. The  
21 answer is stricken.

22 MS. PLACEK: Judge, if it pleases the Court,  
23 I'm forced to retry this matter.

24 THE COURT: The objection is sustained, and the

1 answer is stricken.

2  
3 MS. PLACEK Q Isn't it correct that, in fact,  
4 you went out drinking with the defendant after this  
5 allegedly happened?

6 A No, I didn't.

7 Q Did you tell the police that you went out  
8 to get some liquor?

9 A Yes, I did.

10 Q Did you say you then went to the game room  
11 with the defendant?

12 A No, I didn't, I -- Excuse me?

13 Q Excuse me, ma'am. Did you ever say that  
14 you and the defendant then went to a game room?

15 A Yes, we did.

16 Q Thank you. And this is after he allegedly  
17 raped you, right?

18 A Correct.

19 Q Did you ever testify in any kind of trial  
20 against the defendant in this matter?

21 MR. CASSIDY: Objection.

22 THE COURT: Sustained.

23 THE WITNESS: No, I haven't.

24 THE COURT: The answer is stricken.

MS. PLACEK Q Now, where were you living at



1 the time of this alleged incident?

2 A 7416 South Phillips.

3 Q Did the defendant ever take you in a  
4 garage?

5 A No.

6 Q Did the defendant ever -- Well, let me ask  
7 you this: Did you ever tell the police that the  
8 defendant allegedly wrapped the rope twice around  
9 your neck?

10 A Yes, I did.

11 Q And were they writing it down when you  
12 told them that?

13 A I wasn't paying no attention if they was  
14 or wasn't.

15 Q Do you remember whether or not during your  
16 conversation with the police you, in fact, stated  
17 that he tightened the rope around your neck?

18 A Yes, I did.

19 Q Were they writing it down when, in fact,  
20 you told them that?

21 A I wasn't paying no attention.

22 Q Thank you. How long had you seen the  
23 defendant around previous to that incident?

24 A I saw him twice.

1 Q And what days were those?

2 A I can't recall.

3 Q Well, how long before?

4 A Well, I seen him mostly like coming in and  
5 going out the building when I was coming in or  
6 going out the door.

7 MS. PLACEK: Motion to Strike as nonresponsive.

8 Q When did you see him before?

9 A I saw him a week before he did what he did  
10 to me.

11 Q Did you see him after that?

12 A No, I didn't. Excuse me, could I correct  
13 that?

14 THE COURT: Just answer the question that's put  
15 to you, ma'am.

16 MS. PLACEK Q Did you ever tell the police  
17 when they were asking you what happened that he  
18 allegedly took one leg out of your pants?

19 A Yes, I did.

20 Q Were they writing it down at the time?

21 A Not if I know of.

22 Q Did you tell the Assistant State's  
23 Attorney you spoke of that he took one leg out of  
24 your pants?

1  
2 A Yes, I did.

3 Q Thank you. Was she or was he writing it  
4 down at the time?

5 A I wasn't paying no attention.

6 Q Did you ever tell the defendant that, in  
7 fact, he threatened -- Strike that. Did you ever  
8 tell the police that he threatened you to bring you  
9 into the apartment?

10 A Yes, he did.

11 Q You told the police that?

12 A Yes, I did.

13 Q Did you tell the Assistant State's  
14 Attorney that?

15 A Yes, I did.

16 Q Thank you. Did you ever say to the  
17 Assistant State's Attorney or the police -- Strike  
18 that -- to the police that, in fact, the defendant  
19 threatened to choke you?

20 A No, I didn't.

21 Q Thank you. How far is where you were  
22 living on the time and date from 25 -- 251 West  
23 117th Street?

24 A Will you repeat that, please?

Q How far is it from where you were living

1 at the date and time of this alleged incident is  
2 251 West 117th Street?

3 A That's a long ways from where I was  
4 living.

5 Q And likewise, 11720 South Princeton would  
6 also be a long way, correct?

7 A Uh-huh.

8 THE COURT: Does that mean yes?

9 THE WITNESS: Yes.

10 MS. PLACEK Q Did you appear in court in  
11 Branch 24 on July 22?

12 MR. MURPHY: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, I did.

15 MS. PLACEK Q And isn't it true that, in fact,  
16 the case you told the State's Attorney at that time  
17 that the case wasn't real, and it was to be thrown  
18 out?

19 A Yes, I did.

20 MS. PLACEK: Thank you. That's all. Motion to  
21 Strike. The witness admits the case wasn't real.

22 THE COURT: The motion is denied.

23 State, redirect?  
24

REDIRECT EXAMINATION

BY

MR. MURPHY:

Q Phyllis, what do you mean when she asked you that last question about it wasn't real?

MS. PLACEK: Objection.

THE COURT: Overruled.

THE WITNESS: I didn't understand what she was talking about. She asked me two questions: Was it real, or was it thrown out?

MR. MURPHY Q Did you, in fact, tell somebody from the State's Attorney's Office or anybody in Court that this case didn't happen?

A No, I didn't.

Q And that it wasn't real? In other words, nothing happened to you like you described to Judge Holt?

A No.

Q So when you said in response to the attorney's question about the case wasn't real, you didn't mean that what you testified here today is not true?

MS. PLACEK: Objection.

THE WITNESS: No.

1 THE COURT: Overruled.

2 MR. MURPHY Q You didn't understand her  
3 question, is that right?

4 A No, I didn't.

5 Q And, Phyllis, you testified that you went  
6 to a game room with the defendant after you were  
7 assaulted by him, is that right?

8 A Yes, we did.

9 Q And, in fact, that was your suggestion,  
10 isn't that true?

11 A Yes, it was.

12 Q And why did you suggest that?

13 MS. PLACEK: Objection.

14 THE COURT: Overruled.

15 MS. PLACEK: Judge, we're going to be trying  
16 this thing --

17 THE COURT: That's the very nature of putting  
18 this kind of evidence before the Court. That's one  
19 of the reasons why courts try to avoid it because  
20 it's collateral, and it does require introduction  
21 of evidence that's time consuming, not probative to  
22 the issues before the Court -- all of those things  
23 are true. The objection is overruled.

24 MR. MURPHY Q Why did you suggest that you and

1 the defendant go to the game room?

2 A Where I could get out of his house.

3 Q And you made that suggest in his  
4 apartment, is that right?

5 A Yes, I did.

6 Q And at that time were you afraid of him?

7 A Yes, I was.

8 MS. PLACEK: Objection.

9 THE COURT: Overruled.

10 MR. MURPHY: Nothing further, Judge.

11 THE COURT: Recross?

12 RECROSS-EXAMINATION

13 BY

14 MS. PLACEK:

15 Q You went to the game room after you  
16 purchased liquor, correct?

17 A No.

18 Q Did you ever tell the police that you  
19 finished, you walked up to 75th Street where you  
20 purchased some liquor?

21 A Yes, I did tell the police that.

22 Q And that's when you went to the game room,  
23 correct?

24 A No.

1  
2 Q Did you ever tell the police that, in  
3 fact, you both walked up to 75th Street where you  
4 purchased liquor and then went to the game room?

5 A No, I never told that.

6 Q Okay, thank you, ma'am. Let me ask you  
7 this: When you went to Branch 34, you talked to  
8 the State's Attorney?

9 A Branch 34?

10 Q The court, did you talk to the State's  
11 Attorney?

12 A No, I didn't talk to no one.

13 Q Did you tell anybody your side of the  
14 story?

15 A Yes, I did.

16 Q Who did you tell your side of the story on  
17 that date, and I'm referring to July 2, 1984?

18 A To an officer at the hospital.

19 Q That was on July 2, 1984?

20 A Yes.

21 Q Am I correct in assuming you have no  
22 independent memory of this incident?

23 A I remember.

24 Q Well, let me ask you this: Isn't it  
correct that you testified for this gentleman that



1 it didn't happen on July 2, 1984, it happened on  
2 another date?

3 MR. MURPHY: Objection, Judge.

4 THE WITNESS: No.

5 MS. PLACEK Q Did you ever testify that it  
6 happened in another month besides the month of  
7 July?

8 A No.

9 Q Isn't it correct that at Branch 34 when  
10 you were there on July 2, you talked to a State's  
11 attorney?

12 A No, I didn't talk to anyone.

13 Q Were you in court on July 2, 1984?

14 A Yes, I was in court.

15 Q Did you tell anybody when you were in  
16 court your side of the story?

17 A Yes.

18 Q You never got to testify before a judge,  
19 did you?

20 A No.

21 Q As a matter of fact, the case was thrown  
22 out, correct?

23 MR. CASSIDY: Objection, Judge.

24 THE COURT: The objection is sustained.

1  
2 MS. PLACEK Q Ma'am, isn't it correct that  
3 everything you've said, you've been prompted to  
4 say?

5 A No.

6 Q Well, ma'am, give me the date of the  
7 incident?

8 A Okay, I will put it this way --

9 Q No, excuse me. Give me the date of the  
10 incident?

11 MR. CASSIDY: Objection.

12 THE COURT: The objection is overruled.

13 MS. PLACEK Q Give me the date of the  
14 incident?

15 THE COURT: If you recall.

16 THE WITNESS: Okay, the date that we went to  
17 court -- the day he raped me.

18 MS. PLACEK Q Give me the date of the  
19 incident?

20 A It was in July.

21 Q It was in July. Isn't it correct, ma'am,  
22 that the part about the two, the ropes being twice  
23 put around your neck, the first time you ever told  
24 anybody about that was when you told his Honor,  
Judge Holt?

1  
2 MR. CASSIDY: Objection, Judge. This is beyond  
3 the scope of Mr. Murphy's redirect, Judge.

4 THE COURT: Overruled.

5 MS. PLACEK Q Isn't that correct?

6 A No.

7 Q Well, ma'am, when was the first time you  
8 told anyone about that?

9 A When I was standing in front of the Judge.

10 Q And that's when you said you didn't  
11 testify five seconds ago?

12 MR. CASSIDY: Objection, Judge.

13 THE COURT: Objection sustained.

14 MS. PLACEK Q Ma'am, when you say you were  
15 standing before the judge, would that be in the  
16 branch court in 1984?

17 A Yes.

18 Q And did you testify at that time?

19 A Yes.

20 Q Did you tell me five seconds ago -- Did  
21 you tell me five seconds ago that you didn't  
22 testify --

23 THE COURT: It's argumentative.

24 MS. PLACEK Q Didn't you testify before a  
court?

1 MR. CASSIDY: Objection.

2 THE COURT: Objection sustained. She's  
3 answered that two or three times.

4 MS. PLACEK Q Isn't it correct that you were  
5 told by Mr. Murphy the facts involved in the case  
6 currently at trial?

7 A I don't understand you. Repeat yourself,  
8 please.

9 Q Surely. How many times have you been down  
10 to this Markham Courthouse?

11 A Three times.

12 Q And those three times, that was all  
13 involving preparation for testimony in this case,  
14 correct?

15 A Correct.

16 Q Of the first time, the first of those  
17 three times, how long were you in this courthouse?

18 A Two hours and a half.

19 Q And am I correct that you were on the  
20 second floor speaking with these State's Attorneys?

21 A Yes, I was.

22 Q And isn't it correct you were going over  
23 and over what you were going to say?

24 A No.

1  
2 Q Well, were you talking about what you were  
3 going to testify to?

4 A I was told what I was here for.

5 Q For two and a half hours? And so the only  
6 thing they did for two and a half hours is tell you  
7 why you were here?

8 A Yes, and asked me what happened to me.

9 Q And when they asked you what happened for  
10 two and a half hours --

11 A Yes.

12 Q -- you told them, correct?

13 A Yes, I did.

14 Q Did you have to come back again?

15 A Yes, I did.

16 Q When?

17 A I'll say two weeks later.

18 Q What date?

19 A I'm not sure.

20 Q What month?

21 A This month, in February -- No, first time  
22 I came was January, that was the end of January,  
23 and then I came back again in February, and this is  
24 my, exactly my third time being here.

Q The second time you were here, how long

1 were you here?

2 A Well --

3 MR. MURPHY: Objection, Judge.

4 THE COURT: What's the basis of your objection?

5 MR. MURPHY: Your Honor, it's beyond the scope.

6 THE COURT: Overruled.

7 MS. PLACEK Q How long were you here?

8 A I got here around about 10:00 o'clock. I  
9 left around about 1:00 something.

10 Q And you spent that time also speaking in  
11 preparation for your testimony with these two  
12 State's Attorney?

13 A Yes.

14 Q And were you going over the same thing or  
15 were you going over something different?

16 A The same.

17 Q So in other words, you were again telling  
18 them for three and a half hours what happened to  
19 you?

20 A Yes.

21 Q Let me ask you this: This would be the  
22 third time you were here?

23 A Yes.

24 Q How long were you here before taking the

1 stand?

2 A About half an hour.

3 Q Did you again go over what you were going  
4 to say?

5 A No.

6 Q Well, let me ask you this, ma'am: Were  
7 you ever shown any reports, any words written down  
8 on a piece of paper?

9 A No.

10 Q Do you remember when the State's Attorney  
11 asked you as to certain dates and time about 15  
12 minutes ago?

13 A No, not really. I don't know what she's  
14 talking about.

15 Q Ma'am, isn't it correct that, in fact, you  
16 were told what to say and how to say it -- Strike  
17 that. You were told what to say when you took the  
18 stand today?

19 A No.

20 Q Ma'am, isn't it correct that you were not  
21 only told what to say, but that you were told to  
22 say that you were -- that Mr. Hendricks threatened  
23 to kill you?

24 A No.

1 THE COURT: Miss Placek, are you going to  
2 impeach her if she denies it, if she has, or are  
3 you asking questions to receive a negative answer?

4 MS. PLACEK: The only thing I can go by the  
5 police report --

6 THE COURT: You're talking about something  
7 that's not a police report. You're talking about a  
8 conversation had between the State's Attorney and  
9 this witness, which she consistently denied, and  
10 you're in position to contradict the denial, and I  
11 am wondering why you keep asking these innuendo  
12 kind of questions.

13 MS. PLACEK: For five hours, it strikes me --

14 THE COURT: You can't spread that kind of  
15 innuendo of record unless you have some basis for  
16 it. Put another question.

17 MS. PLACEK Q As a matter of fact, you bought  
18 the liquor that night after this alleged rape, is  
19 that correct?

20 A Yes.

21 Q By the way, in that liquor store, was  
22 there someone else besides you and the defendant?

23 A Me and the defendant never went to the  
24 liquor store.



1 Q So you went alone -- Where did you buy the  
2 liquor?

3 MR. MURPHY: Objection. This is beyond the  
4 scope.

5 THE COURT: This is well beyond the scope, but  
6 it may be probative. Objection is overruled.

7 MS. PLACEK Q Where did you buy the liquor?

8 A I bought the liquor on 75th and Exchange.

9 Q And you said the defendant wasn't with you  
10 when you bought the liquor?

11 A No, the defendant wasn't.

12 Q You never told anybody in the liquor store  
13 that you had allegedly been raped?

14 A No, I didn't.

15 Q And you were alone in that liquor store  
16 without him, correct?

17 A Correct.

18 Q You then went to a game room after you  
19 bought some liquor, correct?

20 A No, I didn't.

21 MS. PLACEK: Sorry. I will withdraw it, Judge.  
22 That's all.

23 THE COURT: Anything further, Mr. Murphy?

24 MR. MURPHY: No further questions, Judge.

1 THE COURT: Thank you, Miss Williams. You may  
2 step down.

3 (Witness excused)

4 THE COURT: Call your next witness.

5 MR. MURPHY: Your Honor, People call Stephanie  
6 Smith.

7 MS. PLACEK: There will be a continuing  
8 objection based on the Court's ruling.

9 THE CLERK: Raise your right hand, please.

10 (Witness sworn)

11 THE COURT: That microphone is on. If you will  
12 speak directly into it, keep your voice up, we will  
13 all be able to hear you.

14 You may proceed, Mr. Murphy.

15 MR. MURPHY: Thank you, Judge.

16 STEPHANIE SMITH,  
17 a witness herein, called on behalf of the People  
18 of the State of Illinois, after being first duly  
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY

22 MR. MURPHY:

23 Q Would you please state your name and spell  
24 your last name?

1 A Stephanie Smith.

2 Q Your first name is S-t-e-p-h-a-n-i-e?

3 A Yes.

4 Q Stephanie, how old are you right now?

5 A Twenty-two.

6 Q What's your date of birth?

7 A 1/12/69.

8 Q And, Stephanie, I'd like to direct your  
9 attention to September 3, 1984, do you remember  
10 where you were living at that time?

11 A Yes.

12 Q Where were you living?

13 A 7416 South Phillips.

14 Q And --

15 May I have a moment, Judge?

16 (Whereupon there was a short

17 pause in the proceedings)

18 MR. MURPHY Q And who were you living there  
19 with, Stephanie?

20 A My grandmother.

21 Q And on that particular day during the  
22 evening hours, did anything unusual happen?

23 A Yes.

24 Q Could you tell Judge Holt what happened?

1  
2 A Yes. I entered the building and saw this  
3 man standing in the building.

4 Q Do you see that man in court today?

5 A Yes.

6 Q Could you please point to him and indicate  
7 an article of clothing?

8 A Sweater, maroon and gray (Indicating).

9 MR. MURPHY: May the record reflect in-court  
10 identification of the defendant.

11 THE COURT: The record may reflect.

12 What date are we talking about.

13 MR. MURPHY: September 3, 1984.

14 Q Is that right, Stephanie?

15 A Yes.

16 Q And, Stephanie, on this particular day,  
17 can you tell Judge Holt what happened when you  
18 stepped into the building?

19 A I then tried to walk up the stairs, then  
20 he grabbed me from behind around my mouth, drug me  
21 into the basement apartment, then put me in a  
22 closet for about 10 to 15 minutes. He left out the  
23 closet, left me in there, he came back into the  
24 closet, then he left out again, and then came back  
in, and then we left out the closet together, then

1  
2 he told me to take off my clothes and lay in the  
3 bed and had sex with me two times.

4 Q And what kind of sex did the defendant  
5 have with you? Can you describe to Judge Holt?

6 A He put his penis into my vagina two times.

7 Q Was there any other type of sex other than  
8 that?

9 A No.

10 Q And, Stephanie, when you came out of the  
11 closet, was anything different about the apartment?

12 A Yes, it was a bed let out.

13 Q And was there anything else?

14 A He had a crutch up against the door.

15 Q What door was that?

16 A The front door.

17 Q And at the time you were with the  
18 defendant, did you and him have any conversation?

19 A Yes.

20 Q What if anything did he say to you or you  
21 say to him?

22 A He asked my date of birth and how old I  
23 was.

24 Q And what did you say?

A My date of birth was January 12, and I was

1 15 years of age.

2 Q And you were 15 years old at that time?

3 A Yes.

4 Q Stephanie, can you tell Judge Holt what  
5 happened after that?

6 A After the sex acts took place, after that  
7 happened, I asked him could I put on my clothes.  
8 He let me put them on. Then we proceeded to the  
9 front door, and he went into a room. What he did  
10 in the room, I don't know; I was just standing in  
11 front of the door. Then he came out the room and  
12 asked me was I coming back. I said yes. He said  
13 how long. I said 10 minutes.

14 Q Did you leave the apartment then?

15 A No, I stood there. I stood up by the  
16 front door. Then he grabbed me around my neck like  
17 this (Indicating).

18 MR. MURPHY: For the record, judge, the witness  
19 got her right arm around her neck, completely  
20 around her neck.

21 Q And when he grabbed you around the  
22 neck, what if anything did he do or say?

23 A It was like he put a little pressure on my  
24 throat.

1 Q Did he choke you?

2 MS. PLACEK: Objection, Judge.

3 THE COURT: Objection is sustained. Leading.

4 MR. MURPHY Q When he put this pressure on  
5 your neck, what did it feel like?

6 A Like slight pressure. It wasn't like I  
7 was gagging or anything.

8 Q And what happened next?

9 A He told me if I told anybody, he'll kill  
10 me.

11 Q And, Stephanie, did you leave the  
12 apartment then?

13 A Yes, and went upstairs to tell my mother,  
14 and she then called the police.

15 Q Now, Stephanie, did you know the defendant  
16 before this?

17 A No.

18 Q Did you know his name even?

19 A No.

20 Q Had you ever seen him around the apartment  
21 building?

22 MS. PLACEK: Objection. Asked and answered.

23 THE COURT: Overruled.

24 MR. MURPHY Q Had you ever seen him around the

1 building?

2 A Yes, one time.

3 Q And the police that the defendant took  
4 you, was that his apartment to the best of your  
5 knowledge?

6 A Yes.

7 MR. MURPHY: May I have a moment, your Honor?

8 THE COURT: You may.

9 (Whereupon there was a short  
10 pause in the proceedings)

11 MR. MURPHY Q Stephanie, how did the defendant  
12 get you into his apartment?

13 MS. PLACEK: Objection. Asked and answered.

14 THE COURT: Overruled.

15 MR. MURPHY Q How did you get from the hallway  
16 into his apartment?

17 A He grabbed me and drug me in there.

18 Q How did he drag you in there?

19 A Like, okay, he grabbed me from around my  
20 mouth and was just holding me and pulling me in.

21 Q And when he dragged you in, did you go in  
22 there willingly?

23 A No.

24 Q Did you stay in his apartment willingly?



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MS. PLACEK: There will be an objection, Judge.

THE WITNESS: No.

THE COURT: Your objection is overruled.

MR. MURPHY Q Stephanie, did you receive any injuries during the course of this incident?

A Yes.

Q What injuries did you receive?

A I had a swollen lip and scar on my face.

Q And that was from when?

MS. PLACEK: Objection, Judge.

THE COURT: I'm sorry?

MR. MURPHY: I will rephrase that question.

Q How did you sustain those injuries?

A That's when he grabbed me from around my face.

MR. MURPHY: No further questions, Judge.

THE COURT: Cross.

MS. PLACEK: Motion to strike again, Judge. This isn't even what the State promised in their argument.

THE COURT: Denied.

CROSS-EXAMINATION

BY

MS. PLACEK:

1  
2 Q Ma'am, you had a conversation with the  
3 police involving this, correct?

4 A Yes.

5 Q And you had a conversation at the time it  
6 happened, correct, or near to the time it happened,  
7 correct?

8 A Yes.

9 Q And they were writing down things,  
10 correct?

11 A Yes.

12 Q Do you remember whether or not you spoke  
13 to a detective from Area 1, Leo Dorociak?

14 A No, I don't.

15 Q Okay, but you remember speaking to a  
16 police officer, correct?

17 A Yes.

18 Q And in answer to the State's Attorney's  
19 question, I believe you said the defendant  
20 allegedly put his arm around your throat after you  
21 had finished, and after you had been allowed to get  
22 dressed, correct?

23 A Yes.

24 Q You never told the police that at that  
time, did you?

1 A You're saying after I got out?

2 Q When you were having a conversation with  
3 the police, they asked you what happened, correct?

4 A Yes.

5 Q And you never told that to the police at  
6 that time, correct?

7 A No, I told them at the hospital.

8 Q Did you tell the police that?

9 A Yes.

10 Q Didn't you, in fact, said, "This time  
11 after he finished he allowed her to get dressed, he  
12 now acted as if nothing happened, and he told her  
13 not to tell her mother, and that he shouted come  
14 back to see him that night, and she wanted to be  
15 released, promised that she would return, he let  
16 her out of the apartment," did you make that  
17 statement to the police?

18 A Yes.

19 Q As a matter of fact, you never told them  
20 at that time anything about you had been dressed,  
21 that he put his arm and put a slight pressure  
22 around your throat?

23 A No, I didn't tell them at that time. I  
24 told them at the hospital.

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Q Did you tell the police at the hospital?

A Yes.

Q Was that the same officer -- Was the officer writing down things when you were telling that?

A Yes.

Q By the way, you were living on Phillips at that time?

A Yes.

Q How far away is that from 251 West 117th Street?

A I have no idea.

Q How far is that from 11720 South Princeton?

A That's a long way, but I couldn't tell you how far.

Q That's all right, Stephanie. Thank you. By the way, this rape allegedly took place in a bed?

A Yes.

MS. PLACEK: Thank you, that's all I have.

THE COURT: Redirect?

MR. MURPHY: No further questions, Judge.

THE COURT: Thank you, Miss Smith, you may step

1 down.

2 (Witness excused)

3 THE COURT: Call your next witness.

4 MR. MURPHY: Judge, I believe we will have no  
5 further witnesses to call. We would be seeking  
6 leave to offer our exhibits at this time.

7 MS. PLACEK: We have a Motion to Strike, Judge,  
8 as to the last two witnesses.

9 THE COURT: The motion is denied.

10 MS. PLACEK: We would also move -- Just for  
11 clarity of the record, is the Court accepting this  
12 as substantive evidence.

13 THE COURT: Yes, I am accepting this for  
14 whatever purpose it can be utilized.

15 MS. PLACEK: Also, we would move to strike the  
16 doctor's testimony, Doctor Fitzpatrick's testimony  
17 as to the nontie-up of the testimony.

18 THE COURT: I would cross that bridge --

19 MS. PLACEK; They are resting --

20 THE COURT: I understand what they're doing.  
21 When they rest -- Prior to resting, they will offer  
22 their exhibits into evidence. We will deal with  
23 that problem at that time.

24 MR. CASSIDY: Judge, prior to resting, we will

1 offer all our exhibits into evidence.

2 MS. PLACEK: Objection. There may be  
3 objections to not all of the exhibits presented,  
4 Judge.

5 THE COURT: Can you particularize which  
6 exhibits you are going to object to, or do you need  
7 to go through the State's exhibits one at a time?

8 MS. PLACEK: Specifically, Judge, let's start  
9 with the X-rays.

10 THE COURT: People's Exhibit 2, 3, 4, and 5,  
11 13, 14, and 15.

12 State, what's the basis for the  
13 admissibility of those exhibits?

14 MR. MURPHY: Judge, with respect to 2, 3, 4,  
15 and 5, those are X-rays taken of the victim while  
16 taking on the case at the Medical Examiner's  
17 Office, on Case No. 262, August, taken of Denise  
18 Johnson. Your Honor, I think with respect to those  
19 particular exhibits, the basis is clear. The  
20 technician testified, identified those X-rays. I  
21 believe they are admissible.

22 THE COURT: Miss Placek?

23 MS. PLACEK: First of all, is that Denise  
24 Johnson? Has Denise Johnson, in fact, been shown?

1  
2 As for the contention that the X-ray technician  
3 identified them --

4 THE COURT: We're talking about 2, 3, 4, and 5,  
5 the coroner's --

6 MS. PLACEK: I understand that. There's been  
7 no identification that that person is the subject  
8 matter of the indictment before the Court. When  
9 the gentleman testified, Mr. Geto (Phonetic), I  
10 believe from the Medical Examiner's Office, there  
11 was, in fact, an objection proffered that no proper  
12 foundation had, in fact, been laid. Specifically,  
13 Judge, the questions on cross was that he took  
14 those X-rays where a question of identity was, in  
15 fact, present.

16 For the purpose of the record,  
17 Judge, they have not, as promised by the State,  
18 been tied up to the matter before the Court.

19 THE COURT: State?

20 MR. MURPHY: Judge, I believe counsel is asking  
21 two questions. One question is what weight to  
22 attach to the exhibits for purposes of  
23 identification, and I believe that's a question  
24 your Honor will resolve, but the question of  
admissibility in and of itself has been satisfied.

1 The defense has not addressed that.

2 THE COURT: Well, People's Exhibit 2, 3, 4, and  
3 5 will be admitted into evidence over the objection  
4 of the defendant.

5 What's the basis of the admissibility  
6 of 13, 14, and 15?

7 MR. MURPHY: Judge, as to 13 and 14 -- Judge,  
8 as to People's Exhibit No. 13 and 14, those are X-  
9 rays with the date of August 19, 1986. Again,  
10 Judge, with respect to those X-rays, the technician  
11 who took those X-rays has testified in this court,  
12 in this trial, and I think it's clear that the  
13 foundation has been established. Those are the X-  
14 rays with the initial C.S. on them. Carolyn Strong  
15 did testify that she took those X-rays on August  
16 19, 1986, and those are the X-rays of the left  
17 wrist.

18 THE COURT: Miss Placek?

19 MS. PLACEK: Judge, if it pleases the Court,  
20 not only have they not tied it up to Denise Johnson  
21 contained in the indictment that it is, in fact,  
22 true, Judge, the X-ray technician testified no  
23 independent memory, Judge, of the person who came  
24 in on that particular date. The testimony of the



1 doctor who testified today disproves, in fact, the  
2 foundation that the State said they laid. I  
3 believe that the State's argument would be that  
4 they showed some kind of example or by some factual  
5 basis that that was the same person by showing of a  
6 guardian taking her to a hospital on that date and  
7 being treated. Specifically without rebuttal,  
8 Judge, their only expert testified, Judge, that in  
9 his opinion, although limited, that he saw nothing  
10 wrong with the hand portrayed in the X-ray.

11 I would point out, Judge, that also  
12 as to the lady who took the X-rays, she, herself,  
13 testified she couldn't remember, there was no  
14 description, man, woman, who this Denise Johnson  
15 was and besides no independent memory that, in  
16 fact, hospitals do make mistakes. This self-  
17 authenticating tag is not self-authenticating,  
18 Judge.

19 THE COURT: State.

20 MR. MURPHY: Judge, we take issue with the  
21 defense's claim that she had no independent memory.  
22 I believe it's clear from her testimony that her  
23 memory was refreshed by the documents, but in any  
24 event, she identified the document of the -- X-ray

1 as an X-ray she took. The foundation has been  
2 laid. The questions with respect to identification  
3 goes to what weight should be attached to those  
4 exhibits by the trier of fact, your Honor. That  
5 does not involve the question of admissibility.

6 THE COURT: Well, I must say to you the  
7 foundation for admissibility is laid, it's sparse,  
8 or maybe it is laid, and the weight to be given to  
9 it is sparse, whichever case it may be, but my  
10 recollection of the testimony of Carolyn Smith, I  
11 believe it is --

12 MR. MURPHY: Strong.

13 THE COURT: Strong, Carolyn Strong, was that  
14 she had no independent knowledge of who this person  
15 was. All she knew was that, what the X-ray showed,  
16 that she took an X-ray of somebody that was Denise  
17 Johnson. Rather, that's sufficient to identify  
18 this as being the decedent in this case is the  
19 issue that Miss Placek is raising, and she says  
20 that the failure to make that identification  
21 destroys admissibility of these X-rays.

22 I'm going to reserve ruling on that  
23 issue to see whether or not I can discern whether  
24 the foundation is complete enough for

1           admissibility, and that should take me a matter of  
2           not long, so it is not necessary. I think we can  
3           proceed without resolution of that problem today.  
4           We can come back to that problem at a later date,  
5           and I don't think that destroys your ability to  
6           proceed by either side how I ultimately resolve  
7           that issue.

8                       So exhibits 13 and 14 and 15 taken  
9           under advisement.

10           MR. MURPHY: Judge, 15 is an X-ray that was  
11           taken on another day, January 10, 1987, which was  
12           not identified by Carolyn Strong.

13           THE COURT: That's the X-ray that was not  
14           identified by anybody except Doctor Fitzpatrick  
15           used to express an opinion?

16           MR. MURPHY: Yes, Judge.

17           THE COURT: That one is taken under advisement,  
18           also.

19                       The remaining exhibits, People's  
20           Exhibit 1 and 6 through 12 and 16 through 61, do  
21           you have any objection to any of those?

22           MS. PLACEK: As to the pictures, Judge, which  
23           I believe --

24           THE COURT: The photographs.

1 MS. PLACEK: The photographs --

2 THE COURT: That's all of them, one or two of  
3 them -- the defendant's exhibit is exhibit No. 49.  
4 I think there's a rights form that's 16.

5 MS. PLACEK: I think that's attached the rights  
6 form.

7 MR. CASSIDY: No, that was from Robert Tovar.

8 MS. PLACEK: That we would move to strike  
9 because that testimony was not even accepted by  
10 this Court, Judge.

11 THE COURT: Twelve are the shoes.

12 MS. PLACEK: Twelve, we would have an  
13 objection. I would point out that as we've always  
14 contended and as what was pointed out in opening  
15 statements by the Court that the point of their  
16 argument was, one, the statement, and, two, the  
17 alleged statement that the defendant was, in fact,  
18 the last person to see her alive.

19 The alleged guardian testified, the  
20 niece/aunt testified she left the house with green  
21 on, and the shoes, Judge, as identified as the  
22 victim in the garage have red writing for what it's  
23 worth on it. We would suggest, Judge, again, the  
24 issue of relevancy becomes before the Court.

1 THE COURT: State?

2 MR. CASSIDY: Judge, I believe that one witness  
3 she's referring to is Miss Yolanda Hill, and I  
4 believe she didn't testify to green, she testified  
5 to pink or red.

6 MR. LUFRANO: She said green.

7 THE COURT: It doesn't matter.

8 MR. CASSIDY: Anyway, she did identify the  
9 shoes when shown to her, and she said those were  
10 the shoes that the victim was wearing prior to  
11 disappearing. So maybe she did say green, maybe  
12 she did say pink, but it goes to the weight of it  
13 anyway, not the admissibility of it, and I believe  
14 Mr. Lufrano has talked to the Court Reporter, I  
15 talked to the Court Reporter, and I will have that  
16 typed up, correct, Mr. Lufrano?

17 MS. PLACEK: And he said green.

18 THE COURT: In any event, discrepancies  
19 between -- the conflict between, and the evidence  
20 do not destroy the admissibility of the evidence,  
21 and Yolanda Hill is not the only one who testified  
22 in regards to the shoes. Officer Nitsche testified  
23 with regard to the shoes and described them as  
24 having -- when recovered at the scene along side

1  
2 the body. So People's Exhibit 12 will be admitted  
3 over the objection of the defendant.

4 The diagram, People's Exhibit 16, do  
5 you have any objections to that?

6 MR. PLACEK: For what it's worth, Judge, no.

7 THE COURT: That will be admitted, also.

8 People's Exhibit 16, your objection  
9 will be sustained. That exhibit will not be  
10 admitted.

11 Do you have any objection to any of  
12 the other exhibits, all of which appears to be  
13 photographs as nearly I can tell.

14 MS. PLACEK: From the time of death, Judge,  
15 through the pathology's testimony or date of birth  
16 was never shown nor testified through their expert  
17 witness, the suggestion, Judge, that those  
18 photographs go in becomes a dichotomy or a problem  
19 for the defense for the single reason, Judge, that  
20 pursuant to case law, we would suggest that the  
21 probative value as to possibly the scene as to the  
22 shoes as it was discovered might be of some weight  
23 and will, in fact, concede same, but we would  
24 suggest, Judge, that, in fact, since they cannot go  
pursuant to case law as to going to show either

1 day or time of death that our objection would be  
2 based as to matters never shown, as to the  
3 relevancy of same.

4 THE COURT: State.

5 MR. CASSIDY: We're seeking, Judge, to have  
6 them all admitted.

7 THE COURT: That's as much of a response, you  
8 care to make?

9 MR. CASSIDY: I didn't understand part of it,  
10 and I didn't want to tell the Court because  
11 obviously the Court didn't --

12 THE COURT: I take it your answer to my  
13 question is yes.

14 MR. CASSIDY: Correct.

15 THE COURT: Do you have anything further.

16 MS. PLACEK: The problem, Judge, as was  
17 previously expressed. There are obviously dead  
18 photos. They are obviously death photos of  
19 someone. There's been no nexus to show that's the  
20 person in the indictment. There's been no nexus as  
21 to the probative value of when this person died or  
22 even as to what date this person died, and as for  
23 this reason, Judge, because of the missing  
24 foundational questions, which would give light to

1 any probes that the State would, in fact, show  
2 through same, and they are, in fact, forbidden from  
3 establishing elements previously mentioned, we feel  
4 we would need to object as to their introduction.

5 THE COURT: All right. People's Exhibit No. 1,  
6 7 through 11 and 17 through 61 will be admitted  
7 without objection -- will be admitted over the  
8 objection of the defendant.

9 THE COURT: State rest?

10 MR. CASSIDY: No, your Honor, I need a couple  
11 of minutes before we decide to rest.

12 MR. LUFRANO: Your Honor, I thought they  
13 already rested.

14 THE COURT: No, that's not correct.

15 MS. PLACEK: Judge, as to 49, excuse me, we're  
16 still dealing with that.

17 THE COURT: As to 49, what is it?

18 MS. PLACEK: Forty-nine is the statement.

19 THE COURT: Yes, I know.

20 MS. PLACEK: If it pleases the Court, your  
21 Honor, perhaps as to my own inarticulation, earlier  
22 I made an objection as to the testimony dealing  
23 with what can be classified as a false exculpatory  
24 statement going before this Court as substantive



1 evidence. I suggested to the Court, and perhaps  
2 ineptly at that time, that the standard as set by  
3 People versus Gutierrez cited at 105 IL App. 3rd,  
4 1059, People versus -- And if the Court pleases, I  
5 will spell this -- P-a-c-u-t-e, cited at 98 IL App.  
6 3rd, 936, and People versus Watson, 103 IL App.  
7 3rd, 9092, and People versus Wilson, 8 IL App. 3rd,  
8 421, that the standards set forth state in order to  
9 introduce a false -- or whatever considered by them  
10 in their case in chief and not in rebuttal -- a  
11 false exculpatory statement that they must, in  
12 fact, during their case in chief prove the  
13 statement false. We would suggest to the Court  
14 that the attempt to do this was done only as to one  
15 issue of that statement at best. That would be  
16 through the testimony of Michael Walker that he saw  
17 supposedly the defendant.

18 We would point out to the Court in the  
19 publishing of the statement that, in fact, the  
20 name, Michael Walker, the name of a false alibi  
21 supposedly or any sort of house of cards allegedly  
22 brought in by the State by attempting to bring  
23 Michael Walker in was never, in fact, mentioned or  
24 shown. The oral statement, pursuant to the cases

1 cited by the defendant, have not reached the  
2 standard of a false exculpatory statement in order  
3 for it to go in as part of the State's case in  
4 chief.

5 Relying on this case law, Judge, we  
6 would suggest to the Court that we would now renew  
7 our Motion to Strike that testimony involving both  
8 the oral statement and the written statement for  
9 the simple reason that it hasn't been shown to be  
10 false.

11 THE COURT: Mr. Cassidy?

12 MR. CASSIDY: Judge, it's our position it's  
13 inculpatory statement. It's up to the trier of  
14 fact to determine how they want to view the  
15 statement, and our position, it's inculpatory, and  
16 we don't necessarily agree with counsel, although  
17 she gives you the cite we do not believe her  
18 proposition that she offers as a matter of law.  
19 That's all we have, Judge.

20 THE COURT: Miss Placek?

21 MS. PLACEK: Judge, in response, questions were  
22 never proffered by the State of the witnesses  
23 dealing with the oral statement and its prodigy --

24 THE COURT: Let me ask you this to see if we

1 can get to the nuts and bolts of this. What's the  
2 false exculpatory statement that you alluded to?

3 MS. PLACEK: I am alluding to the written  
4 statement and supposedly the oral statement. I  
5 believe State is presenting that as a false  
6 exculpatory to be taken as substantive evidence.

7 THE COURT: No, I don't think so. They are  
8 presenting the written statement as an inculpatory  
9 statement, an admission by the defendant,  
10 tantamount to a confession. If I have to pin them  
11 down, they will tell me it's a confession. Whether  
12 that's correct in the sense it annunciates all the  
13 essential elements of the crime, which is a  
14 confession is we need not decide, but it's  
15 certainly their position that if it is not a  
16 confession, it's an admission of criminality of the  
17 defendant and not an exculpatory statement.

18 MS. PLACEK: Then I would ask, Judge, that the  
19 Court, in fact, hold it, hold that statement and  
20 that evidence dealing with same only against the  
21 defendant with that count of the indictment to  
22 which it speaks, which is the criminal sexual  
23 assault and stating, Judge, unless they are willing  
24 to concede that they see it as true and correct.

1  
2 THE COURT: Well, they don't have to concede  
3 anything. I will give to the statement that which  
4 it is entitled to and no more and no less, but the  
5 question of its admissibility based upon it being  
6 an exculpatory statement is inaccurate. You may be  
7 accurate on what the law is if, in fact, it is an  
8 exculpatory statement, but it is not an exculpatory  
9 statement, and, therefore, we do not have to deal  
10 with whether or not they have proven it or not.

11 MS. PLACEK: We would suggest, of course, that  
12 it is because it meets, and there has been no  
13 argument to the contrary of the State, that it does  
14 not have the required elements of those charges  
15 other than one count of the indictment, which is  
16 before the Court.

17 THE COURT: Well, the State may very well argue  
18 that that statement is sufficient -- a confession  
19 as to that one count and which I can infer guilt as  
20 to all the other counts. I don't know how they are  
21 going to ask me to use it nor is it relevant for me  
22 to decide that issue at this point. The fact of  
23 the matter is that the statement is not  
24 exculpatory.

MS. PLACEK: We would, of course, take

1 exception with the Court, Judge.

2 THE COURT: Anything further?

3 Are you now ready to rest,  
4 Mr. Cassidy?

5 MR. CASSIDY: We forgot the slides. Today we  
6 marked the slides as Exhibit --

7 THE COURT: 4-A and 14.

8 MR. CASSIDY; And 15-A and 2-A, Judge.

9 THE COURT: You were to give me the projector,  
10 also.

11 MR. CASSIDY: Judge, we will get you a  
12 shadowbox, we will get you a projector or whatever  
13 you like, or a flashlight.

14 THE COURT: They will be received into  
15 evidence.

16 MS. PLACEK: Judge, I ask the Court has ruled  
17 and reserved ruling as to the subject matter.

18 THE COURT: All right. We will take those  
19 along with the others for consideration. I will  
20 rule on all of those X-rays, that is 13, 14, and  
21 15.

22 MR. LUFRANO: 14-A --

23 THE COURT: 4-A is admitted, 14-A and 15-A will  
24 be taken along with the others.

1 MR. LUFRANO: Thank you.

2 MR. LUFRANO: 4-A is admitted over objection?

3 THE COURT: 4-A is admitted over objection.

4 MR. CASSIDY: Have we covered all the exhibits  
5 then, your Honor?

6 THE COURT: Yes, I think so.

7 MR. CASSIDY: You're going to take under  
8 advisement People's Exhibit No. 13, 14, and 15?

9 THE COURT: 13, 14-A, 15, and 15-A.

10 MR. CASSIDY: And then People's No. 16 has been  
11 refused by the Court?

12 THE COURT: That's right.

13 MR. CASSIDY: And all other exhibits which has  
14 been identified by the various witnesses are being  
15 admitted over objection or not?

16 THE COURT: That's right.

17 MR. CASSIDY: Judge, with that, then, people  
18 would rest.

19 THE COURT: State rests?

20 MR. CASSIDY: Yes, your Honor.

21 THE COURT: Defense?

22 MS. PLACEK; We wold have a Motion for Directed  
23 Judgement; the memorandum is being typed. As a  
24 matter of fact, the young lady came to get the

1 final point.

2  
3 Your Honor, we suggest that at best  
4 our evidence will take no more than a half hour,  
5 that we would just ask permission of the Court and  
6 especially in light of what we feel the incorrect  
7 ruling of the Court dealing with the matter of the  
8 other crimes evidence, Judge, permission to include  
9 that. We would ask, Judge, two things can be done:  
10 We will reserve our right to argue our Motion for  
11 Directed at the close of the defendant's case, or  
12 in the alternative, we would ask that we be allowed  
13 to argue it tomorrow.

14 THE COURT: Reservation of the right to move  
15 for directed finding at the close of the State's  
16 case probably acts as a waiver.

17 MS. PLACEK: Well, I understand that, Judge,  
18 and what I prefer to do at this particular time as  
19 I understand the Court's ruling because I believe  
20 that the State has a serious corpus delicti problem  
21 even at the time for the motion of the directed.  
22 Quite frankly, I would like some time to go into  
23 the matter. I can be here tomorrow at anytime the  
24 Court wishes.

THE COURT: Mr. Murphy and Mr. Cassidy, I'm

1 going to grant that request. The question becomes  
2 whether or not we can deal with this tomorrow,  
3 Friday, or one day next week. I am not very  
4 optimistic that the time estimate of counsel in  
5 terms of length of time for her case is accurate,  
6 but nonetheless, I am going to allow them an  
7 opportunity to communicate with them in writing if  
8 they choose to. I will even allow after that  
9 communication an opportunity for you if you choose  
10 to respond in writing, also. Consequently, maybe  
11 we might be just as well off to set this for  
12 tomorrow, receive counsel's written communication  
13 to the Court, and then you can make a realistic  
14 evaluation as to whether we should proceed or  
15 whether or not you want time to respond.

16 MR. MURPHY; That's fine, Judge.

17 THE COURT: The defendant's Motion for Directed  
18 Finding is entered and continued. Order of Court,  
19 February 21.

20 MR. MURPHY: Judge, is there any particular  
21 time you want to set this?

22 THE COURT: I will hear this first thing  
23 tomorrow as soon as the defendant arrives. Will  
24 your memorandum be prepared tonight, or do you need



1 time tomorrow?

2 MS. PLACEK: I can be here at anytime the Court  
3 suggest, but I would ask that perhaps we set the  
4 time at approximately 10:00 or 9:30.

5 THE COURT: 10:00 o'clock is good.

6 MS. PLACEK: Thank you, Judge. I would, of  
7 course, not be waiving right to argue same.

8 THE COURT: No, you're not going to waive your  
9 right to argue. I will give you an opportunity to  
10 argue for as long as you choose.

11 MS. PLACEK: Judge, as for the first witness of  
12 other crimes for the purposes of the record, we  
13 would ask as part of the record the police report  
14 involving that case be made part of the court file.

15 THE COURT: Well, we will deal with that, we  
16 will reach that stage when we get into your case.  
17 Bring that matter to the Court's attention.

18 (Which were all the proceedings  
19 had in the above-entitled cause.)

STATE OF ILLINOIS  
COUNTY OF COOK

} ss

I, AURELIA PUCINSKI, Clerk of the Circuit Court of Cook County, in said County and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of .....  
VOLUME TWO OF A FIVE VOLUME  
SUPPLEMENTAL RECORD CONSISTING OF THE ( REPORT OF PROCEEDINGS) ONLY. NO PRAECIPE  
.....  
HAVING BEEN FILED PURSUANT TO THE NOTICE OF APPEAL FILED IN THE APPELLATE COURT  
.....  
UNDER APPELATE COURT NO. 95-0474.....  
.....  
.....

in a certain cause ..... LATELY ..... pending in said Court, between  
The People of the State of Illinois. .... WERE ....., Plaintiffs and  
JEROME HENDRICKS ..... WAS ....., Defendant. ....

Witness: AURELIA PUCINSKI,

Clerk of the court, and the Seal thereof, at Chicago

In said County, JUNE 26, ....., 19 96..



*Aurelia Pucinski*

Clerk

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

CCCR-310

95-474  
**Transcript of Record**  
**Appeal**  
**to**  
**APPELLATE**  
**FIRST**  
**Court of Illinois**  
**District**

**SUPPLEMENTAL RECORD**  
**Circuit Court No.** 88 CR 12517  
**Trial Judge** LEO HOLT  
**Reviewing Court No.** 95-0474

THE PEOPLE OF THE STATE OF ILLINOIS

**vs.**

JEROME HENDRICKS

**from**  
**CIRCUIT COURT**  
**of**  
**COOK COUNTY, ILLINOIS**  
**COUNTY DEPARTMENT, CRIMINAL DIVISION**

**ORDER ENTERED**  
JAN 1 / 2007  
APPELLATE COURT, First District

**AURELIA PUCINSKI**

**Clerk of Court**

**VOLUME THREE OF FIVE VOLUMES**  
**SUPPLEMENTAL RECORD**

**Per AP/nd**

**Deputy**

1 IN THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT  
2 COOK COUNTY, ILLINOIS

3 THE PEOPLE OF THE )  
4 STATE OF ILLINOIS, ) Criminal  
5 Plaintiff, ) No. 88CR12517  
6 vs. ) Charge: Murder  
7 JEROME HENDRICKS, )  
8 Defendant. )

9  
10 JURY TRIAL

11 Court commenced pursuant to  
12 continuance, February 21, 1991, before the  
13 Honorable LEO E. HOLT and a jury, at 11:30  
14 o'clock a.m.

15 PRESENT:

16 MR. SCOTT CASSIDY,  
17 MR. JOHN MURPHY,  
assistant State's Attorneys,  
for the People;

18 MS. MARIJANE PLACEK,  
19 MR. VINCENT LUFRANO,  
assistant Public Defenders,  
20 for the Defendant.

21 -----  
22  
23 Rella R. Jordan,  
Official Court Reporter  
24 Markham, Illinois, 60426

1 THE CLERK: Jerome Hendricks.

2 THE COURT: Both sides now ready on  
3 Mr. Hendricks?

4 MS. PLACEK: Your Honor, at this time if  
5 the Court would hear argument on a Motion for  
6 Direct Finding?

7 THE COURT: Are you going to file a  
8 memorandum?

9 Have you tendered a copy to the State?

10 MS. PLACEK: I will at this time.

11 THE COURT: State, are you ready for oral  
12 argument or would you rather postpone this case  
13 and file a responsive memorandum and argue all  
14 after the responsive memos have been filed, or in  
15 the alternative, I will hear Counsel's oral  
16 motion. I will continue the matter and allow you  
17 to file a written response and follow it with oral  
18 argument, or whatever other suggestion you and  
19 Counsel have to make to the Court.

20 MR. MURPHY: Judge, I would like an  
21 opportunity to review the memorandum before we  
22 proceed to oral argument. We may file a written  
23 response.

24 THE COURT: Does that mean a momentary

1 continuance, Mr. Murphy?.

2 MR. MURPHY: No, Judge, I don't think we  
3 will be prepared to respond to the motion today.

4 THE COURT: I think, then, Ms. Placek,  
5 Mr. LuFrano and Mr. Murphy, what I will do is to  
6 continue this matter for a period of time and let  
7 you file a responsive memorandum, if you so  
8 desire, at which time after both memorandums have  
9 been filed, we'll hear oral arguments.

10 Would you desire an opportunity to reply?

11 MS. PLACEK: Yes, Judge, I would.

12 I would ask for a briefing schedule to be  
13 established and I would, in fact, ask that the  
14 Court set it and ask as the Court may or may not  
15 know, Mr. LuFrano and myself and I'll tender the  
16 Court a copy of this memorandum that was to be  
17 some support of our motion.

18 I would most definitely like a chance to  
19 write a reply brief in this matter. My  
20 suggestion, as I stated is to set up briefing  
21 schedule. I would ask that this be both done,  
22 that the State either turn over to me or Mr.  
23 LuFrano their memorandum at least two days before  
24 the oral argument. And, judge, quite frankly, I

1 think I would need about a day to respond.

2 THE COURT: Well, I'll gave you more time  
3 than that.

4 Mr. Murphy, how much time do you  
5 anticipate will be necessary consistent with your  
6 other responsibilities for you to file your memo?.

7 MR. MURPHY: Judge, it's difficult for me  
8 to determine, I don't know what to respond to. I  
9 am aware of a case involving a jury trial next  
10 week which will take a lot of my time. In the  
11 normal circumstances, if I had the time I think I  
12 could probably respond in about a week or ten  
13 days.

14 THE COURT: What about 15 days?

15 MR. MURPHY: Judge, that sounds adequate.  
16 If I have a problem, could I let the Counsel and  
17 the Court know before then, but I think we can  
18 respond in that period of time.

19 THE COURT: How about five days to  
20 respond after that?

21 MS. PLACEK: That would be agreeable,  
22 Judge, as long as we get it on the 15th day or  
23 before, if it's done before.

24 THE COURT: How about March 25th for

1 arguments?

2 MR. MURPHY: That's fine, Judge.

3 That would also be completion of the  
4 trial if the motion is denied.

5 THE COURT: The defense tells me they  
6 only need 30 minutes. I suspect that that's  
7 optimistic but assuming that that's reasonably  
8 within the ballpark, yes, if the motions are  
9 denied, we should be prepared to proceed to trial.  
10 If you need subpoenas that are out, I will  
11 continue the subpoenas until that day.

12 MR. LuFRANO: They are, your Honor.

13 The officers involved have been in touch  
14 with the State as to which date they are to  
15 appear. I presume.

16 MS. PLACEK: I have no real problem with  
17 putting the State in the care and custody of our  
18 witnesses as long as they have them show up on the  
19 date that they are needed.

20 MR. MURPHY: I have no objection to that.  
21 It must be Scott Cassidy you are talking about.

22 THE COURT: In any event, to file his  
23 memorandum in support of the motion for direct  
24 finding.



1 MS. PLACEK: When is the Court setting a  
2 deadline for defense answer?

3 THE COURT: 15 days from today's date.

4 No, for the State.

5 MS. PLACEK: 15 true days, correct?

6 THE COURT: I don't know what kind of  
7 days.

8 MS. PLACEK: Working days.

9 THE COURT: 15 calendar days.

10 Order of court.

11 MS. PLACEK: And then five after that, is  
12 that correct?

13 THE COURT: That is correct.

14 March 25th for further proceedings.

15 Ms. Placek, do you have another  
16 document--

17 MS. PLACEK: Another copy? Yes, Judge, I  
18 do.

19 THE COURT: -- for the Court file.

20 MS. PLACEK: One of the reasons for this  
21 being retyped, correct, I apologize for the  
22 spelling, I will go through it again and try to  
23 correct any spellings.

24 (Whereupon the hearing of

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this cause was continued  
to March 25, 1991.)

PEOPLE OF THE STATE  
OF ILLINOIS,

Plaintiff,

-vs-

JEROME HENDRICKS,

Defendant. ]

Criminal Division

No. 88 CR 12517

Before Judge Leo E. Holt,  
Monday, March 25, 1991,  
9:30 a.m.

PRESENT:

MR. JOHN MURPHY, Assistant State's Attorney.

MS. MARIJANE PLACEK, and  
MR. VINCENT LUFRANO, Assistant Public Defenders.

Mary A. Gleeson, CSR  
James Donahue, CSR  
Official Court Reporter

1241

2

1 THE CLERK: Sheet 1, line 19: Jerome Hendricks, in  
2 custody.

3 MS. PLACEK: Judge, for purposes of the record,  
4 Marijane Placek with Vincent Lufrano, representing Mr.  
5 Hendricks, before the Court. It is my understanding  
6 that we are here for directed finding and argument,  
7 although I have been hearing rumors the state will  
8 reopen.

9 THE COURT: Did you file a response?

10 MS. PLACEK: Yes, Judge. I have my copy. I have  
11 it stamped. Your Honor, for the purpose of the record,  
12 I filed one on March 4, and had it stamped at 26th  
13 Street -- March 14, excuse me.

14 THE COURT: If you filed it at 26th Street, it is no  
15 wonder that it didn't make it here.

16 MS. PLACEK: Well, no one is as efficient as  
17 Markham.

18 THE COURT: It is not a part of the court file. Did  
19 you serve a copy on the state?

20 MS. PLACEK: As a matter of fact, Mr. Lufrano saw me  
21 here last week. I went up to their office.

22 MR. MURPHY: I haven't received it, Judge.

23 MS. PLACEK: I have one final copy, if the state  
24 wishes. I also made copies of the cases cited therein,

3

1 which I don't -- I'll give one to the state at this  
2 time, Judge. I know my work.

3 THE COURT: Are we then ready for hearing on the  
4 arguments and ruling on the defendant's motion for  
5 acquittal at the close of the state's case?

6 MS. PLACEK: Defense stands ready, Judge.

7 MR. MURPHY: Judge, I am asking this Court allow the  
8 state an opportunity to reopen our case in chief.

9 MS. PLACEK: I would have a severe objection after  
10 they filed a brief on the matter, Judge. Quite frankly,  
11 Judge, I would ask the Court --if the Court is even  
12 considering it -- or just for the purposes of the record  
13 to ask the state on what matter and for what reason they  
14 wish to reopen.

15 THE COURT: Mr. Murphy.

16 MR. MURPHY: Judge, although it is our contention  
17 that we have established the identification of the  
18 victim in this case beyond a reasonable doubt, the Court  
19 has taken under advisement our offer of the x-rays which  
20 were taken of the deceased in Roseland Community  
21 Hospital.

22 Your Honor, it is our position that although we  
23 have established the identifications specifically with  
24 respect to these x-rays, that if the Court does have

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1 some reservations based on the ruling at this point,  
2 that we would be prepared to call additional witnesses  
3 from Roseland Community Hospital who would establish, in  
4 fact, that on the date of January 10, 1987 that, in  
5 fact, the x-ray that the Court has, which is in  
6 evidence, is, in fact, the x-ray of Denise Johnson, the  
7 same date of birth as the Denise Johnson who is the  
8 deceased in this case.

9 MS. PLACEK: With all due respect, Judge, just  
10 basically on the state's argument, that is almost like  
11 giving the state two bites of the apple -- no, I take  
12 that back, Judge. It is more than that. It is letting  
13 the judge become part of the prosecution. In other  
14 words, Judge, you tell me what I need to convict this  
15 man, and then you allow me to do it. If I'm  
16 insufficient, then you come back and tell me again.  
17 Then I will reopen and allow myself to work in concert  
18 with the Court.

19 Judge, furthermore, we would suggest, Judge,  
20 that our original objection to the personnel at Roseland  
21 Community Hospital was based on a hearsay objection. I  
22 would suggest, Judge, that if the Court is considering  
23 allowing the state to reopen, that, in fact, the state  
24 be more specific that the evidence, in fact, that would

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1 be allowed before this Court would, in fact, pass the  
2 test of evidence. In other words, they would be able to  
3 call these people rather than waste the Court's time.

4 THE COURT: Do you have anything else you would like  
5 to state?

6 MR. MURPHY: Judge, I would just indicate this: I  
7 am well aware during the course of this trial -- when  
8 the Court referred the state to a section in Chapter 38  
9 that prohibits using hospital records under the business  
10 record exception as a business record. However, there  
11 are other ways that evidence can be offered outside of  
12 that area.

13 Your Honor, it is our position that there has  
14 been no evidence offered by the defense at this point.  
15 The defendant is not prejudiced in any way by allowing  
16 the state to offer additional evidence if we choose to.

17 MS. PLACEK: Judge, I would point out --

18 THE COURT: No. Finally. Otherwise we will be here  
19 arguing back and forth.

20 MS. PLACEK: Do I get one more bite of the apple,  
21 Judge?

22 THE COURT: No.

23 MS. PLACEK: Oh, okay.

24 THE COURT: Motion to reopen is addressed to the

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1 sound discretion of the Court. In 99.9 percent of the  
2 instances, I allow the parties to reopen. The  
3 difficulty in this case is that the defendant has at  
4 least on his motion for acquittal fully exposed their  
5 position. I am unable to tell whether or not the  
6 request to reopen is predicated upon matters which the  
7 defendant has brought to the attention of the  
8 prosecution and the Court in his motion for acquittal.

9 While I agree that the trial of a lawsuit,  
10 including a criminal case, is not a proceeding that  
11 ought to be conducted on the basis of who is the more  
12 gifted, who is the more -- can make the more sufficient  
13 use of the rules of evidence and things of that nature,  
14 but ought to be an in-depth exploration or exploration  
15 for the truth.

16 Nonetheless where the defendant has fully  
17 expressed his position, including issues that relate  
18 directly to the proposed evidence that will be  
19 introduced if allowed to reopen, it seems to me that  
20 that is -- acts as everything else, a waiver. It has  
21 gone beyond a point of neutrality. It is incorrect to  
22 suggest that the defendant is not prejudiced. It is  
23 true that the defendant has not adduced evidence, but he  
24 has made a material exposure of his strategy and his



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1 defense. The motion to reopen is denied. I am going to  
2 continue this matter until 1:45, at which time we will  
3 hear arguments on the defendant's motion for acquittal.

4 MS. PLACEK: Your Honor, with all due respect,  
5 although the state said they did not get my copy, I have  
6 enclosed the cases.

7 THE COURT: I have them.

8 (Noon recess taken.)

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1 STATE OF ILLINOIS )  
 2 ) SS  
 3 COUNTY OF C O O K )

4 IN THE CIRCUIT COURT OF COOK COUNTY  
 5 COUNTY DEPARTMENT-CRIMINAL DIVISION

6 THE PEOPLE OF THE )  
 7 STATE OF ILLINOIS, )

8 Plaintiff, )

9 -vs- )

10 JEROME HENDRICKS, )

11 Defendant. )

Case No. 88 CR 12517

Charge: Murder, Etc.

12 REPORT OF PROCEEDINGS had in the above-  
 13 entitled cause on the 25th day of March, A.D.,  
 14 1991, at 1:00 o'clock p.m. before the HON. LEO HOLT.

15 APPEARANCES:

16 HON. JACK O'MALLEY,  
 17 State's Attorney of Cook County, By:  
 18 MR. JOHN MURPHY, and  
 19 MR. SCOTT CASSIDY,  
 20 Assistant State's Attorneys,  
 21 Appeared for the Plaintiff;

22 MR. RANDOLPH N. STONE,  
 23 Public Defender of Cook County, By:  
 24 MS. MARIJANE PLACEK, and  
 MR. VINCENT LUFRANO,  
 Assistant Public Defenders,  
 Appeared for the Defendants.

1 THE CLERK: People versus Jerome Hendricks.

2 THE COURT: Are both sides ready for argument  
3 on the Defendant Hendricks' Motion for Acquittal  
4 at the close of the State's case?

5 MS. PLACEK: Yes.

6 MR. MURPHY: Yes, Your Honor.

7 THE COURT: Counsel, you may proceed.

8 MS. PLACEK: To supplement what I have already  
9 written, quite frequently during this trial I have  
10 often made mention to this Court that in fact,  
11 I've often felt, since I don't feel like this gentle-  
12 man here before you, constantly like a stranger in a  
13 strange land. Although not meaning to question  
14 this Court's courtesy to visiting counsel, perhaps  
15 the best way I can move into my argument would be by  
16 analogy. In Switzerland, in front of the Rolex  
17 factory, there's a great statue, a statue of a great  
18 lion. The lion is neither proud, but the lion has  
19 died. When I say the lion is dying, it's obviously  
20 from the craftsmen of the statue that this lion  
21 is dying because it's not only in a reclining  
22 position, but the Court can see, if the Court would  
23 go there, many wounds in the lion's body. The  
24 lion clutches one thing in his hands -- excuse me,

1 its paw, if you will, and that is the shield of the  
2 Swiss Guard. When you see this lion you start  
3 wondering why it clutches the shield. The Swiss  
4 Guard seems to be only those people who go to visit  
5 the Vatican, taking pictures of those cute men in  
6 uniform that represents some other time. But this  
7 lion goes back to the French Revolution. Evidently  
8 the Swiss were at one time mercenaries. Evidently  
9 the Swiss Guards were the mercenary force during,  
10 in fact, the French Revolution, and while those  
11 loyal Frenchmen who swore upon their life to defend  
12 and stand by their king, ran in the face of the  
13 monarch during the revolution. The Swiss Guard  
14 stayed. They stayed and they guarded the king  
15 until every one of them was dead and the monarch  
16 eventually took the king.

17 I know quite openly I'm laying myself  
18 into ridicule by going into this story and the  
19 problem the State will say would -- what does this  
20 have to do with the murder and rape we are trying  
21 in this court. It's simply this, Judge: No more  
22 than those gentlemen in the 1700s believed in the  
23 French Monarchy or even believed that Louis was a  
24 good king. Did they give up their lives for that?

1 They gave up their lives for an oath they took, an  
2 oath to in fact be faithful to their job and to the  
3 service of this job. An oath similar to what I have  
4 taken and to what you have taken, and that oath goes  
5 faithful to the law. And to be faithful to the law  
6 even when this Court may find the crime, it is in  
7 fact judging to be distasteful as in this case.

8 It is the Defendant Hendricks' suggestion  
9 at this current time that in fact the evidence  
10 presented by the State is so lacking and so shallow  
11 that it can't reach the burden it must reach and  
12 therefore, this Court has no other, no other consequence  
13 than in fact to acquit the Defendant.

14 In briefs and motions before the Court,  
15 many things have come out, but the evidence had been  
16 slowly stilled and the evidence which the Court has  
17 before it revolves around two matters. One, the  
18 circumstances of the finding of a body. And I say  
19 a body because the State, through their evidence  
20 and through questions not asked, through questions  
21 not revealed to this Court, has ~~filed~~, either  
22 through preparation or their lack of ability to  
23 prepare, to present this Court with reasons why  
24 that body was present in that garage. When that

1 body first became present in this garage, and  
2 secondly, how that body became present in that  
3 garage.

4 The other piece of evidence that the  
5 State has relied heavily on, and which the Court  
6 has characterized through my motion, is of a  
7 statement or confession by Mr. Hendricks. Now,  
8 the reason I give it the legal term confession  
9 or statement is because if the Court remembers,  
10 over the objection of the State, I objected at  
11 the time of that statement originally being intro-  
12 duced. The statement is simply this: that on  
13 August 1st, during the early evening hours, I had  
14 sex with the girl. It was consensual sex. I then  
15 left the garage. I never saw the girl leave the  
16 abandoned garage.

17 The second part of the statement said,  
18 "Several days later," again, there is an unclarity  
19 or unsurety about, about the dates. I went back  
20 on an investigatory mission for my mother. She  
21 said that there's a bad smell. I was taking out  
22 the garbage. I saw the same girl in the garage  
23 then dead.

24 The reason I say that that in fact takes

5

1 the form of a statement or confession is because the  
2 Court denied my motion during this trial to strike  
3 that statement as an inconsistent statement or  
4 false alibi. Because the State failed to present  
5 witnesses, that in fact would prove that statement  
6 false. The Court stated to me, I believe to  
7 paraphrase, "No, Ms. Placek, the State isn't  
8 presenting this as a lie or a false alibi," which  
9 of course I could not admit at this time, and their  
10 one witness, the witness they brought in from  
11 Stateville who said he didn't see the Defendant,  
12 and the word again is see, wouldn't be enough to  
13 allow inadmissible. They are taking it as a confes-  
14 sion. Therefore, I must take it as a confession,  
15 and according to the Court's ruling, I must deal  
16 so weakly as must the Court and as the State is  
17 faced to under Illinois law take it as a statement.

18 The interesting thing about this statement  
19 is this. It neither admits violence either in the  
20 sexual encounter or in any kind of result of the  
21 sexual encounter. In other words, to put it in  
22 plain, basic, blunt English, it never admits to  
23 murder. Now, what do we have here? Well, we have  
24 the State with circumstances. We have the State

1 with a confession that confesses to nothing. The  
2 legal significance is just as I previously stated;  
3 nothing. Because as the Court knows, according to  
4 Illinois law, the State at this point of a trial  
5 must in fact prove the corpus delicti of a crime.  
6 I have run over what has been cited in both original  
7 briefs over and over and this includes the criminal  
8 agency that in fact the death was caused or that  
9 the crime was caused by a criminal agency and the  
10 Defendant was in fact the one who did it. The  
11 Court knows the law. But when the State refused  
12 to admit either in their presentation of the case  
13 or in their reply brief to my original brief, is  
14 that the statement itself can never border, hold  
15 up in fact substantiate any sort of circumstantial  
16 evidence needed to finish up this corpus delicti.

17 To go over briefly the evidence of the  
18 case, they must prove the identity of the victim.  
19 How have they done it in this case? Well, quite  
20 frankly, they haven't. As a matter of fact the  
21 evidence that they've proven contradicts, contradicts  
22 the evidence of their expert Fitzpatrick. And the  
23 reason for this is quite simple. Number one, there  
24 is but one set of x-rays to be considered by the



1 expert. The one set of x-rays deals with the arm. The  
2 one set of x-rays that deals with the arm showed neither  
3 fracture, a question asked by myself on cross examin-  
4 ation, is there a fracture or any evidence of a past  
5 fracture present within the x-ray? The doctor said  
6 no. Yet in their case, to their leading, to in fact  
7 their testimony, the grandfather of the girl testified  
8 as to a fracture. Judge, go one step further.  
9 What has the State also failed to show? The State  
10 has failed to show as to the identity issue this,  
11 and this simply: That in fact the person named  
12 within the Indictment was in fact somehow the  
13 person who was the same person who was taken to  
14 Roseland Community Hospital and who in fact  
15 subject, and again I would point out subject,  
16 because we are neither conceding nor has this Court,  
17 with all due respect, and again I haven't had the  
18 benefit of the transcript, admitted those x-rays into  
19 evidence. Is this in fact the same person who in  
20 fact the doctor compared the x-rays of?

21 Now, much of their brief deals with the  
22 Drake case. In dealing with the Drake case, Judge,  
23 the State didn't quote the one matter, and we  
24 presented the Court with the Drake case and that was

1 so contra. When in fact, looking at the corpus  
2 delicti, when the evidence is pretty circumstantial  
3 as in this case, as it is in the identification,  
4 quite frankly the Court must look with an eye to  
5 every reasonable hypothesis of innocence.

6 Judge, therefore, even under what seems  
7 to be a contradictory standard, looking at it quite  
8 frankly with an eye in the best of light and uncontra-  
9 dicted to the State, that is the doctor's testimony,  
10 all he identified is the fact that one x-ray, again,  
11 not admitted into evidence and not proven to be the  
12 named party in the Indictment, seems like the same  
13 x-ray of the person involved. Well, says the State,  
14 we don't need that. At the time of the writing of  
15 the brief, and I apologize, I didn't have the benefit  
16 of transcript, it was delivered to this office rather  
17 than my office at 26th Street, but be that as it may,  
18 we have proven by the clothing identification. What  
19 else could it be but that?

20 Well, Your Honor, let's go to the clothing  
21 identification. There is in fact, there is in  
22 fact no other clothing identification except that of  
23 the shoes. With all due respect to the Court Reporter,  
24 I would again take issue with the fact that she has

1 the writing being in fact, and I am speaking the  
2 writing of the knees on both shoes. I would suggest  
3 to the Court that as I mentioned in my brief, they  
4 were of different color.

5 Moving on from that, because the State,  
6 with the pathologist present, has a vast space of  
7 time that is from the first to the eighth, when  
8 the body is discovered, Judge, in the garage, and  
9 since again the State never bothered to ask the  
10 pathologist to a reasonable degree of medical  
11 certainty what was in her expert opinion the time  
12 and date of death. The suggestion, the suggestion  
13 that in fact the identification can in fact over  
14 this huge space of time be made simply by this one  
15 piece of evidence. In light of the Drake case and  
16 in light of the cases cited by the Defense, it's  
17 absurd and beyond the law of Illinois.

18 We would further find fault with the State's  
19 brief. I'm a little confused by the State's case,  
20 that in the series of cases it's always been said  
21 that the corpus delicti can only be proven by  
22 independent evidence and that of independent evidence  
23 other than confession. Therefore, the statement  
24 in their matter says, "Well, the Defendant even

1 admitted it was the same girl." It's an absurdity.  
2 Because, Judge, that was made again in this alleged  
3 statement made by the Defendant. We have relied  
4 heavily on the Kokoraleis case cited and delivered  
5 to the Court. The interesting thing about  
6 Kokoraleis and Lee is that the Court overturned  
7 the death penalty case based on the fact that  
8 although the Defendant had testified and had stated --  
9 when I say testified, by way of statement, word-for-  
10 word, line-for-line, to the admission, to the admission  
11 of a crime, the Court still said it isn't enough.

12 I would suggest that if in fact they are  
13 relying on this Defendant's statement to be enough,  
14 again, we have no admission. We not only have no  
15 admission, Judge, but we have something further.  
16 We have a reasonable circumstance again presented by  
17 Perfecto, again presented by Drake. The cases  
18 cited by the State themselves whereby circumstances  
19 could happen. We have, during both cross examination  
20 and direct examination, the Court hearing a descrip-  
21 tion of the circumstances and the place where the  
22 young lady was found. The Court has found that,  
23 or the Court has learned that it's a place of common  
24 area. When I say common area, it's an abandoned

1 garage. Not only an abandoned garage, but an open  
2 garage. The Officer testified he had no problem  
3 getting in the door; the door was wide open. Not  
4 only was the door wide open, Judge, the State has  
5 shown us no evidence to the contrary in their  
6 case.

7 We would further point out, Judge, that  
8 in this wide-open place, the area of exclusivity  
9 is out of the reach of the argument of the State  
10 for the simple reason that through their charts  
11 and through their diagrams, they kept saying,  
12 well, it's right next door to the Defendant. Well,  
13 Judge, even according to their diagram and even  
14 according to their charts, it's just a tiny bit  
15 further than that of the house of the victim.

16 We would further point out, Judge, that  
17 not only that, but also, also from the testimony  
18 of their expert, and I'm speaking of the pathologist,  
19 and not rebutted in any way by any counter questions,  
20 we have a situation where in this open garage there  
21 is a dead body. With all due respect, Judge, the  
22 legal significance of that is non-existent. Because  
23 what you have is, you have a dead body in a perfectly  
24 open area without any substantiation presented within

12

1 the statement of the Defendant. Well, says the  
2 State, he talked about shoelaces. He talked about  
3 doing this, and he talked about doing this. Nothing  
4 except consensual sex. And a reasonable hypothesis,  
5 even under cases questioned by them, and even in  
6 cases cited by them, was presented by their own  
7 expert and not contradicted, nor were any questions  
8 asked as to that. I asked about certain adolescent's  
9 sexual preferences. I asked about the process and  
10 I believe was their relying on, well, he said it  
11 was this way and it was this way, which is incorrect.  
12 When I speak of their reply, brief words, he said  
13 she wanted me to put this around her neck. Well,  
14 look carefully. Compare the testimony as it states  
15 in the statement and the way the body was found,  
16 and the Court will not only see the differences,  
17 but also, Judge, the Court will see in fact the  
18 testimony of the pathologist opened up sexual  
19 practices, although not in fact widely adhered to  
20 by young adolescent women. In fact, Judge, there  
21 is such a sexual practice about young adolescent  
22 women to heighten sexual pleasures to put something  
23 around their neck to heighten it. The reasonable  
24 hypotheses were presented not only in Drake or

1 Perfecto, but the cases suggested, and in fact quoted  
2 heavily by the State's Attorney, is thereby met and  
3 thereby established.

4 When I started my argument, Judge, I said  
5 nothing is so disdainful as death and as rape.  
6 Excuse me. There is one more thing distasteful,  
7 and that is the failing of the meeting of an oath.  
8 The State has failed to meet its burden. The Court  
9 has taken an oath to uphold the law because the  
10 Court has taken this oath. The Court must hold  
11 the State to the standard as established by Illinois  
12 law.

13 The standard is simply this: The corpus  
14 delicti must in fact be proven. According to People  
15 versus Lee, at this stage it must be proven on each  
16 element charged within the Indictment beyond a  
17 reasonable doubt. When in fact the circumstances,  
18 when in fact the State chooses or views or uses  
19 only circumstantial evidence to collaborate the  
20 corpus delicti of a crime, the Court, before  
21 allowing the State to go further, before allowing  
22 the trial to go further, must in its mind examine  
23 every reasonable hypothesis of innocence as meeting  
24 the circumstantial evidence as quoted by the State

1 on cases.

2 For this reason, Judge, we would ask the  
3 Court to sustain our motion for directed finding  
4 and acquittal. We would of course reserve the right,  
5 as the movant in this case, for a reply.

6 THE COURT: Thank you, Ms. Placek.

7 State?

8 MR. MURPHY: Judge, the issue that is raised by  
9 the Defense in their brief which they filed --

10 THE COURT: Mr. Murphy, I don't mean to inter-  
11 rupt you, but there is out there yet something that  
12 should have been resolved, perhaps even before  
13 Ms. Placek started her argument. The reason that it  
14 wasn't simply was an oversight on my part. That is  
15 the admissibility of People's 2, 3, 4, 5, 13, 14 and  
16 16. The admission of 13, 14 and 15, I believe  
17 that is an issue.

18 MR. MURPHY: That is my recollection, Judge.  
19 I believe you took those under advisement, right?

20 THE COURT: I have concluded that pursuant to  
21 the provisions of Section 115 -- 115-5, 115-5(B)  
22 or (C) provides that and the entirety of the Statute  
23 deals with the admissibility of business records  
24 as evidence. 115-5(C)(1) provides that such writing

15



1 or record has been made by anyone in the course of  
2 any form of hospital or medical business, and that  
3 means that it's not admissible when it's in that  
4 form. That is medical records.

5 MR. MURPHY: As a business record.

6 THE COURT: As a business record are not admis-  
7 sible. Consequently, that does not, as you tend  
8 to suggest by that remark, preclude the admissibility  
9 of the records. The record may be proven as any  
10 other record may be proven. The evidence in this  
11 case as to 13, 14 and 15 is that the grandfather of  
12 the decedent in this case, on two separate occasions,  
13 once in '86 and once in '87, took her to Roseland  
14 Community Hospital on the dates that hospital, that  
15 x-ray records were made of a person by the name of  
16 Denise Johnson. The hospital records, the x-ray  
17 records that are sought to be admitted has the name  
18 of Pat, name of the hospital and date, and initials  
19 of the technician too, who took the x-rays. Nothing  
20 further. Nothing to connect the person that posed  
21 for those x-rays, if you please, to the decedent  
22 in this case, except that the decedent was in the  
23 hospital on the same date. The Court concludes that  
24 that is an insufficient foundation to allow the

1 x-rays into evidence. Accordingly, Exhibits 13, 14  
2 and 15 will not be admitted into evidence.

3 Mr. Murphy, you may proceed.

4 MR. MURPHY: Judge, may I address the Court's  
5 ruling?

6 THE COURT: Mr. Murphy, I thought about the  
7 ruling since this case was last before me. You are,  
8 of course, entitled, and I will hear you and I will  
9 hear you with as much of an open mind as I can, but  
10 I want you to understand that I thought about it  
11 for some time.

12 MR. MURPHY: Judge, if I may address, just that  
13 ruling.

14 Your Honor has before you the Exhibits  
15 which consist of x-rays, x-rays taken on August 19th,  
16 1986, and x-rays taken on January 10th, 1987. Your  
17 Honor, the x-rays, as you have already indicated,  
18 both indicate the name of Denise Johnson on them  
19 who coincidentally is the victim in this case. Both  
20 sets of x-rays are from Roseland Hospital. The  
21 x-rays of August 19, 1986, are of the left wrists.  
22 The x-rays from January 10th, 1987 are of the  
23 pelvis area.

24 Your Honor has heard testimony from

1 the evidence, from the x-ray technician at Roseland  
2 Hospital regarding the taking of x-rays on August  
3 19th, 1986. Your Honor has not heard any testimony  
4 from an evidence technician involving the taking  
5 of an x-ray taken on January 10th, 1987. If I under-  
6 stand the Court's ruling, the Court is saying that  
7 there is not a sufficient connection between the  
8 x-rays, and on those dates and the victim in this  
9 case, Denise Johnson. However, Your Honor, what  
10 I would ask the Court to consider is this. We  
11 have x-rays taken of Denise Johnson on each of  
12 those two days. We have evidence that Denise Johnson  
13 went to the same hospital on each of those two days,  
14 that on the first date, August 19th, 1986, she  
15 injured her left wrist and she was in fact treated  
16 and received a bandage on her left wrist. Coincidentally  
17 there is an x-ray of the left wrist. We also have  
18 testimony, Your Honor, that coincidentally on the  
19 date of January 10th, 1987, the same date an x-ray  
20 was taken of Denise Johnson's pelvis, that Denise  
21 Johnson injured her hip. Not only was she taken  
22 into that hospital, that her grandfather carried her  
23 in and sat her down on a table within the radiology  
24 room.

1 MS. PLACEK: Objection.

2 THE COURT: Overruled.

3 MR. MURPHY: Your Honor, the coincidence is  
4 amazing. It's circumstantial evidence, that's true,  
5 but nonetheless, Judge, what you have before you  
6 is evidence in which you can infer that the x-rays  
7 that were taken are the x-rays of Denise Johnson.  
8 What are the odds, Your Honor, that a person  
9 named Denise Johnson had her left wrist x-rayed in  
10 the same hospital on August 19th, 1986, and her  
11 pelvis x-rayed on January 10th, 1987?

12 Your Honor, it's our position that if  
13 anything, the evidence regarding the time between  
14 these x-rays and Denise Johnson goes to what weight  
15 should be attached to the consideration of those  
16 exhibits. However, it's our position that  
17 clearly where the x-ray technician testified, that  
18 x-ray is admissible. And it's also our position,  
19 and the Court should only consider those Exhibits  
20 as to what weight should be attached to them.

21 THE COURT: The admissibility of 13, 14 and  
22 15 is denied.

23 You may proceed with your argument,  
24 Mr. Murphy.

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1 MR. MURPHY: Your Honor, the Defendant, in  
2 both the brief and the supplemental or additional  
3 brief that was tendered today, has raised the issue  
4 of corpus delicti. The case law is pretty clear  
5 in this case as to what must be established in  
6 order for the State to prove corpus delicti. One  
7 element that is fairly in the case law is proof  
8 of death. Whether the Court considers this  
9 identification as part of that or not, I will  
10 address it at this particular point. Much in this  
11 case has been made by the Defense as to whether or  
12 not identification has been proven by the State.  
13 The case law again is clear as to what evidence  
14 can be considered by the Court. Circumstantial  
15 evidence of identification can be considered. The  
16 evidence in this case shows, Judge, that on August  
17 1st, 1988, Denise Johnson disappeared. She was  
18 never seen alive from that date to the present, or  
19 at least to the date the Court heard evidence in  
20 this case. She was never found alive by her family.  
21 The body of a girl was found less than one-half  
22 block from where she was last seen. The body was  
23 that of a Black female who was the same height and  
24 the same weight as Denise Johnson.

1 MS. PLACEK: Objection. Misstatement.

2 THE COURT: Objection is overruled.

3 Ms. Placek, I have heard the evidence and  
4 I will be the arbiter of whether the evidence,  
5 of what the evidence shows.

6 MR. MURPHY: Your Honor heard testimony regarding  
7 Yolanda Hill, as to height and weight of Denise  
8 Johnson. The Medical Examiner testified regarding  
9 the height and weight of the body on which she  
10 performed the autopsy. I would ask Your Honor to  
11 go back and consider the evidence with respect  
12 to those issues, if there is any question of fact,  
13 and in addition, Your Honor, there was testimony  
14 that the clothing was the same. Specifically,  
15 Yolanda Hill described knee-length pants, light  
16 colored and a black tank top. The original officer  
17 at the scene described the same type of clothing  
18 on the victim.

19 I submit to Your Honor that the evidence  
20 in this case shows that Denise Johnson was wearing  
21 the same clothing.

22 In addition, Your Honor, we have something  
23 more. We have the shoes Denise Johnson was wearing.  
24 The shoes were described as white shoes with Princess

1 brand name, with the name Denise written on it.  
2 Throughout this trial, Judge, the Defense has made  
3 much about the fact, well, the name was written  
4 differently. Well, Your Honor, I have a copy of  
5 the transcript of the testimony of Yolanda Hill  
6 and clearly in her testimony, she describes the  
7 shoes as the name Denise being written in red ink.

8 Throughout this trial the Defense has  
9 represented to this Court that she testified it  
10 was green. Your Honor, if you look at the shoes  
11 that is in evidence in this case, her description  
12 of the shoes is consistent with the shoes which  
13 the victim in this case had on. If that weren't  
14 enough, Your Honor, there is more. We have the  
15 Defendant's statement. His own statement, he says  
16 that this is the girl that he was with. I will  
17 take you back, Judge, to that statement, and within  
18 that statement he says at one point he met a girl  
19 who was staying at 11720 Princeton, that he saw  
20 the girl a few times during the day when he was  
21 babysitting at Carlina's house. We learned during  
22 the course of this trial, Judge, the victim in this  
23 case was babysitting at Yolanda Hill and Carlina's  
24 house which is located at 11720 Princeton. The same

1 statement, the Defendant goes on to say that on  
2 Wednesday or Thursday, following Wednesday or  
3 Thursday, his family was complaining about a smell  
4 coming from the garage. He says when he went to  
5 the garage he saw something that looked like a  
6 body. He went over to see what it was. He saw  
7 it was the same girl he had sex with and that the  
8 shirt was still in the same position over her  
9 head. Your Honor, from the Defendant's own  
10 statement, he tells you and tells this Court  
11 that in fact the body that is there is the same  
12 body as the body of Denise Johnson, in the same  
13 position, a position he describes consistent  
14 with the position her body was found in when the  
15 police found her there on August 8, 1988.  
16 Whether the Court wants to consider the clothing  
17 description and the shoes and the height and the  
18 weight, that alone is enough but the Court can go  
19 a step further and look at the Defendant's state-  
20 ment which you can consider as part of the identification  
21 and determine that identification was made in this  
22 case.

23 The Defendant also argues that we have  
24 not established as part of an element of corpus



1 delicti that proof of death was produced by criminal  
2 agency. Well, clearly in this case, Judge, death  
3 was established. Clearly in this case, the cause  
4 of death was strangulation. That's what the  
5 Medical Examiner testified.

6 Your Honor heard during this trial that  
7 there were two ligatures that were found around  
8 the victim's neck. There was another ligature  
9 found tying her hands together behind her back.  
10 Clearly, Judge, the circumstances in this case  
11 indicate that a criminal act had occurred.

12 The Defendant wants this Court to believe  
13 something that is absolutely preposterous. That  
14 somehow she was engaged in some type of sexual act  
15 by herself and that she inflicted death to herself.  
16 Well, that's ridiculous. Her hands were tied behind  
17 her back. She could not have done that to herself.  
18 She couldn't have tied the other ligature around  
19 her neck with her hands tied behind her back. That  
20 is absurd. The Defendant also raises the issue  
21 as to whether or not a connection has been established  
22 between the crime in this case and him. Whether  
23 the Court considered this in terms of proof beyond  
24 a reasonable doubt or whether the Court looks as an

1 element of corpus delicti, either way, Judge, again,  
2 the tie has been made.

3 Your Honor, so many times in this courtroom  
4 we ask juries to use the common sense that God gave  
5 them in looking at evidence. The common sense that  
6 allows you as a person who has had various experiences  
7 in your life to listen to evidence and decide what is  
8 believable and what is not believable, and to make  
9 inferences as to what you hear. Well, Your Honor,  
10 I submit that if you consider your life experiences,  
11 the common sense that God gave you and consider the  
12 evidence in this case, there is only one conclusion  
13 that you can draw, and that is that the Defendant is  
14 directly tied to the victim in this particular case  
15 as both the person who sexually assaulted her against  
16 her will and her murderer.

17 Your Honor, we cited in our brief various  
18 cases just as an example of how, when a defendant  
19 gives a statement denying an offense such as murder,  
20 and that statement is considered in the light of  
21 other evidence that the Court can use that statement  
22 and can consider it in convicting the defendant,  
23 or the jury, or who ever the trier of fact may be.  
24 In our brief we cited the Murdock and the Moore cases.

1 I don't think it's important to go back over the  
2 facts in those cases because the Court has had an  
3 opportunity to read those cases. What those  
4 cases basically say is the Court can look, the  
5 trier of fact can look and use your common sense  
6 and look at those statements of denial and infer  
7 and consider those statements and determine evidence  
8 of guilt.

9 The Defendant's story is preposterous.  
10 It's outrageous. It's absolutely ridiculous.  
11 The only inference that you can draw from that story  
12 is that he assaulted this 12-year-old girl and he  
13 murdered her.

14 In order to believe his story, Judge, you  
15 have to believe that this girl led him to the garage  
16 next door to his house, the girl who was babysitting.  
17 Doesn't even live in the neighborhood. That a girl  
18 whom he had been propositioning earlier that night  
19 suddenly turned around and wanted him.

20 MS. PLACEK: Objection.

21 THE COURT: The objection is overruled.

22 MR. MURPHY: Your Honor heard evidence that  
23 he was propositioning her or making some advances  
24 at her in front of the porch at 11720 Princeton.

1 Your Honor has evidence, his statement that suddenly  
2 she wanted him. For you to believe what the  
3 Defendant tells you, Judge, you have to believe  
4 that this 12-year-old girl wanted to have sex  
5 with him so badly that she would have sex with  
6 him at a hard, dirty garage floor, that she  
7 wanted to have sex with him in such a perverse way  
8 that she wanted, as he described, a rope or a  
9 shoelace around, somewhere near her head during  
10 the sex act. That this 12-year-old girl wanted  
11 him to ride her like a horse during the sex act.  
12 That this 12-year-old girl, who had had sex with  
13 him two times, wasn't satisfied and wanted more.  
14 He described her as acting like a freak. And that  
15 this man who had just had an intimate act of sex,  
16 according to him, consensual sex, according to him,  
17 just walked out and let this girl in the garage,  
18 this 12-year-old in the garage by herself. His  
19 story isn't the truth, Judge. It sounds like a  
20 perverted sexual fantasy, the sexual fantasy of  
21 Jerome Hendricks. If that weren't enough, Judge,  
22 it doesn't end there, it goes further. The Defense  
23 tells you that we misrepresented the facts in our  
24 brief, Judge. In his statement the Defendant says

1 that the shirt was in the same position over her head  
2 when he saw her body a few days after he had consensual  
3 sex with her in the garage, in the same garage where  
4 the body was. This is a guy, according to his state-  
5 ment, who had just engaged in consensual sex a few  
6 days earlier, just leaves her there, just left her  
7 there, Judge, to rot in the garage. And he goes out  
8 to manufacture a defense, goes to one of his friends,  
9 Michael Walker, and says, "How about giving me an  
10 alibi for the night before? How about telling the  
11 police I was with you?" But for the fact Michael  
12 Walker, when the police called and asked him about it,  
13 he said, "No, he tried to tell me, but I never was  
14 with him."

15 What does all that tell you, Judge, as a  
16 trier of fact? And here is the guy who wants to  
17 clear himself on August 8th and August 9th when he is  
18 at the police station. But what does he do? He lies.  
19 One lie after the other. No, I wasn't with her.  
20 Well, I had a little sex. Well, I had a little more  
21 sex. Well, I rode her like a horse on the garage  
22 floor when I had sex with her.

23 Judge, when you consider this statement,  
24 when you consider the evidence in this case, it's

1 clear that we have maintained, we have established  
2 that the Defendant is guilty of first degree murder,  
3 that ie is guilty of all the other charges with  
4 respect to this motion, and we would ask, when you  
5 look at this evidence in the light most favorable  
6 to the State, that you deny Defendant's motion  
7 for directed finding.

8 THE COURT: Thank you, Mr. Murphy.

9 Ms. Placek?

10 MS. PLACEK: I take it by Counsel's argument  
11 that he is conceding the State has failed to prove  
12 both date of death and time of death. And I take it,  
13 Your Honor, that this is still a motion for acquittal  
14 instead of a closing argument. The reason I'm saying  
15 this, Judge, is for the simple reason that rather  
16 than prey on your emotions or your prejudice, or the  
17 horror of the basic events, I would rather to stick  
18 to both the law and the facts involved in the law  
19 and as they are stated even by the State's own brief.

20 What we did in our reply brief, Judge,  
21 is to go over the State's cases that they cited in  
22 Illinois law. In ever one of the cases cited by  
23 Illinois law, there was either a witness present for  
24 the actual killing or identification, or there was a

1 witness who saw a defendant go into where the victim  
2 was and then come out bloodied and scratched, and then  
3 lo and behold the body was discovered. The suggestion  
4 that this is somehow applicable is somehow absurd,  
5 both in reason and logic.

6 When you're using your common sense, Judge,  
7 which the State just bid you to do in applying the  
8 factual evaluation of the case, then the suggestion  
9 would be that when the State asked questions as to  
10 the evidence as presented within the witness stand,  
11 the Court should ask itself that when the same  
12 witnesses were cross examined, why in fact in rebuttal  
13 didn't the State clear up the misconception or the  
14 misunderstanding?

15 Now, this is not the time by loud voice  
16 or by screaming or by yelling to clear up misconcep-  
17 tions. That should have been done then. The  
18 misconceptions I speak of first is the one dealing  
19 with the identification. The State says, "Yes,  
20 they were the same things. They were described.  
21 They were the exact same clothes. We know that they  
22 were." Such huge leaps of the identification has  
23 been made for the simple reason, Judge, that number  
24 one, number one, there was never an identification

1 of the clothing made or possibly was able to make or  
2 was shown from the witness stand from the first to  
3 who was found on the eighth. Secondly, said the  
4 State, well, forget all that. The description was  
5 exactly the same.

6 I would ask the Court, and I apologize  
7 for in fact interrupting the Court and the State  
8 during its argument, but the pathologist, as shown  
9 by the protocol, stated that in fact the person  
10 found within the garage was approximately, and later  
11 done by her as part of the protocol, was approximately  
12 five feet eight inches, approximately 86 pounds.  
13 When the family member was in fact on the night,  
14 I would ask the Court to check its notes on direct  
15 examination, she always stated that Denise Johnson  
16 was over the height of five feet. Not only over  
17 the height of five feet, but over some 100 pounds.  
18 Not only that, Judge, but the comparison goes even  
19 further to absurdity when their own officer states  
20 that in fact the person found in the garage, and  
21 again perhaps my notes are sketchy, I would ask the  
22 Court to rely on its own memory and notes, was  
23 approximately five feet six and 120 to 130 pounds.  
24 If this is conclusive within that finding of the law,

31



1 Judge, I would suggest that it would indeed be a  
2 surprise, and I would be indeed saying that this  
3 is not the time, either by a great show of passion  
4 or a great show of prejudicial screaming, is it a  
5 time of clearing up the issues.

6 I would further point out to the State  
7 an attempt by my old corrections to show up, that  
8 they say we have proven the corpus delicti by the  
9 statement. Quite frankly, Judge, not meaning to  
10 be tiresome, not meaning to be boring, I would  
11 suggest that in every case, even the cases as  
12 cited by in fact the State in their own brief,  
13 constantly say that in fact the corpus delicti  
14 cannot be proven up by the statement. Corroborative  
15 evidence, independent evidence must be shown and  
16 the burden becomes stronger when it is in fact  
17 circumstantial evidence. Where is it? I don't know.  
18 I can tell you where it isn't. It isn't there.

19 Secondly, I make the statement that this  
20 isn't the time to clear up through loud voices or  
21 in fact by dramatics. The facts could have been  
22 cleared up on the stand. The simplicity is that  
23 the State is asking the Court to take approximately  
24 a seven-day leap of mind, a seven-day leap of mind